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Elena Kagan News 2 [4]

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ECHAVESTE: Those names were considered, but what we tried to do was put together a group that we feel could advise us on the policies and issues that we want to pursue.

QUESTION: They basically agree with the president.

Elapsed Time 00:28, Eastern Time 13:44

QUESTION: You're having a board, but you've already decided what you're going -- that you want these people to support what you...

ECHAVESTE: I think what we're talking about when we talk about affirmative action is a pretty fundamental core -- one of the policy areas that we'll be looking at. So in that area -- and actually, I think the truth is we didn't ask that question when we asked the members to serve.

QUESTION: Why not?

(UNKNOWN): What is the question I'm answering here?

ECHAVESTE: I'm answering the question of did we -- do we have people on the -- is the question do we have people on the board who support...

QUESTION: (OFF-MIKE) like a full debate. I mean did you take -- there are plenty of prominent people who have made it clear they're opposed to affirmative action. I mean, did you seek out those kind of people or was it clear that you want essentially people who basically agree with the president's approach to advise on more narrow questions rather than the whole spectrum?

Elapsed Time 00:29, Eastern Time 13:45

ECHAVESTE: On the issue of Prop 209 and affirmative action specifically, there were names on the list that are opposed to our position that we originally put together. However, on that particular issue, we did not directly ask people -- Do you support that? Do you not support that?

QUESTION: But you ruled out the people you knew who were opposed? Is that correct?

MATHEWS: This commission is more -- it's not -- it's not a commission. It's an advisory board. You know, you're thinking of a commission...

QUESTION: You ruled out the people you knew were opposed, isn't that correct?

MATHEWS: There are going to be...

ECHAVESTE: They will be a part of the dialogue. At this point...

QUESTION: But they won't be on the advisory board?

MATHEWS: At this point, all the people -- the people that are mainly vocal against affirmative action are not a part of the advisory board.

QUESTION: Did you consult with any people like that in the process?

QUESTION: Can you identify any people that were consulted with?

MATHEWS: I just don't have my list of names. But we did talk to people who thought that -- who had different views about how to deal with racism in this country -- that where the answer isn't in affirmative action but economic opportunity as a way of dealing with those issues. We did talk to people like that.

Elapsed Time 00:30, Eastern Time 13:46

QUESTION: You were talking about healing the racial divide. What American are you specifically hoping to target or to bring into the fold with this whole initiative?

ECHAVESTE: I think that it is our hope that the initiative will reach everyone. When we say "race," we are referring to whites, Hispanics, blacks, Asian-Americans and Native Americans. We believe it's very important for whites in the country to be a part of the initiative.

QUESTION: Are you looking more so to more white people to understand that there's a problem, especially since you said earlier that the majority here in America is white?

Elapsed Time 00:31, Eastern Time 13:47

ECHAVESTE: We're looking for both. We're looking for both people of color as well as whites to look and examine the issue and see. That's part of why in the study session we talked about stereotypes versus reality. To understand which groups have a, you know, we're going to look at which pieces are right and which are reality.

QUESTION: Is there a concern that the California affirmative action action will spread through the country?

MATHEWS: It's -- I mean...

QUESTION: Is that contagious?

MATHEWS: Well, I wouldn't use the word "contagious." The fact is is that a lot of people all over the country are saying that affirmative action is not needed, that in fact racism and discrimination is no longer a problem. So...

QUESTION: I mean, in the states and so forth, (OFF-MIKE)...

MATHEWS: Yes, absolutely.

QUESTION: (OFF-MIKE).

QUESTION: Can I try a question that I ask in a briefing, again. Is the president prepared to deal with the possibility that this full discussion, as often occurs in, say, in employment -- in work places, that this could exacerbate racial problems at least in the short term? And what would he be willing to do about that?

Elapsed Time 00:32, Eastern Time 13:48

ECHAVESTE: I think that as we discussed before, that the president is ready for a difficult discussion. I think as was reported today and has been reported before, that sometimes people efforts on this front do create strains and stresses.

And I think we're ready for taking that on. I think we've already seen the advertising that's occurred, both in Washington and San Diego, which are signs.

We are, as I have said, going to have critics from the left and the right. And that's because it is a very, very important issue that many people feel very passionately about. And we're already hearing that, and I think we're ready to take that.

QUESTION: You said you talked to some people who disagree with the administration's position. Was Ward Connerly one of them? And what is your reaction to the fact that he -- while he's running these radio ads against the president, will be there at the commencement address Saturday?

ECHAVESTE: He's a UC regent.

QUESTION: Is he somebody you talked to?

ECHAVESTE: No, but he's...

QUESTION: What do you say to a lot of these civil rights leaders who are very upset that they're not on this advisory board, like Jesse Jackson, Kweisi Mfume, people of that nature?

Elapsed Time 00:33, Eastern Time 13:49

MATHEWS: Part of the reaction we got when we were doing our outreach was the fact that a lot of people said don't try to do a committee. Don't try to do a group. You'll never figure out who should be on it.

The fact is, the president cannot take on this issue alone. And he is a full-time president. And when a small advisory group that can help guide and help us identify the key issues, what we should focus on when we're travelling around the country what is the way to go. And that was the decision that was made.

And we'll be consulting with those people. I think you all know Reverend Jackson was in last week. And Kweisi Mfume was in as well this week.

MATTHEWS: So the effort is not limited to the advisory board.

QUESTION: So the concern is the fact they deal with civil rights and issues like this on a daily basis.

MATTHEWS: And they have the expertise, and we will be working with them. I mean, think of it as -- well, the way we think of it is a year-long process in which, at different points and times, different groups of people will be convened, a conversation had, at which -- certainly, in the process here in the White House that we had, there was in fact different views around that table

that was very enlightening and eye-opening.

Elapsed Time 00:34, Eastern Time 13:50

QUESTION: Sylvia, does the president believe that the fundamental conclusion of the Kerner Commission is still accurate today, that there are two societies in this country -- one black, one white -- separate and unequal?

MATTHEWS: I think he would say that we have made some progress, but that there is still a long way to go. And I think the other thing that he would say is it's not a black and white. It's a black, white, Asian-American -- that it's a different -- in that sense, it's also different from Kerner. That it's not just two. It's a hundred. And that's a part of why the initiative is so important at this time.

QUESTION: Was the Justice Department civil rights job did that -- did you make a concerted effort to get that filled prior to the announcement this weekend? Does that explain the timing of that?

MATTHEWS: We have been working on that for a while. We were pleased that we were able to announce it before we go to California.

Elapsed Time 00:35, Eastern Time 13:51

QUESTION: Could you elaborate on just what the president role is envisioned to be? You have talked quite a bit about the board here. Is he going to be -- does he see himself as a mediator, a conciliator, a moderator? What exactly is his ultimate role in this process?

MATTHEWS: I think the president will have a number of different roles. We will depend on his intellectual leadership as we go through our processes with the executive staff as well as the White House staff. He will be the person that will be on the line in terms of his events, leading dialogue in different settings such as town halls.

Elapsed Time 00:36, Eastern Time 13:52

He also will be the president speaking to these issues in terms of like how he will do in the speech in California, which are three different ways that the president will be involved and engaged in the process.

LOCKHART: We'll just take care of a couple more and then...

QUESTION: Sylvia, do you all have a sense yet of what kind of venues you are going to do the town halls in and when the first one will be?

MATTHEWS: No, we have had a number of requests that I think once we get -- we want to consult with the advisory board as well as the executive director. We have had a number of requests from everyone from communities to news organizations.

QUESTION: When do you anticipate -- how long (OFF-MIKE) before you do the first town hall?

Elapsed Time 00:37, Eastern Time 13:53

MATTHEWS: I think that will be dependent on the president's schedule.

QUESTION: Is there some core set of beliefs that the president has at this point that he will -- just wants to do that he thinks is right and that maybe he wants his advisory board to help him find a way to implement it? But coming into this -- and if so, can you tell us what the course of the beliefs he has in terms -- and I mean, very specifically -- something that should be a piece of legislation, something that could be remedied by one way or the other, like where is his ferment here going into this?

MATTHEWS: I think sort of two different answers to that question.

LOCKHART: Speech.

(LAUGHTER)

MATTHEWS: We'll let Mr. McCurry -- that will come out in the speech.

All right. Well, thank you.

LOCKHART: One thing quickly. The Little Rock Central High visit is September 25.

QUESTION: Is that the anniversary of this...

MCCURRY: And the scheduling staff was delighted, if somewhat surprised, that we announced that. I had got asked that, I think, a while back. Well, thank you to Sylvia and Maria for that briefing. Anything else in the world that any of you would like to know about?

QUESTION: I'd like to hear about disaster relief.

MCCURRY: Apparently the Republican caucus has been caucusing for most of the day and there hasn't been any white smoke. You know, sooner or later, they will come out and say, yes, we recognize the president's concerns and we also recognize the concerns of the people who have been waiting for disaster assistance, and they will pass something and send it down here so we can get on with life. But unfortunately, that hasn't happened yet.

QUESTION: Do you think it'll happen today?

MCCURRY: We hope so. We had, of course, indications from the Republican leadership that they were set to acknowledge this time to move on and pass something so that the president could sign it, but they apparently are still quibbling amongst themselves. We wish they would stop fighting amongst themselves and just get on with work and send us a bill.

QUESTION: They claim that the president has violated an agreement that they -- that he wants to go higher now on the amount of aid?

MCCURRY: I think the issue was just getting full funding for the disaster assistance programs that we were talking about and that's what we would like.

They have suggested some ways in which they might want to trim some of the funding from other aspects of the bill and Mr. Hilley from our staff has given them some general parameters that would be acceptable to the White House so that they can craft the right kind of legislation.

I mean, they know what will pass the test for the president. They just haven't been able to produce anything at this point.

Elapsed Time 00:38, Eastern Time 13:54

QUESTION: Mike, is there a prospect of an imminent breakthrough on the tobacco issue?

MCCURRY: No that I've heard.

QUESTION: Some of the attorneys general, that some of the people involved say that they are very, very close. Is the White House prepared to sign off on this deal if there is a deal?

MCCURRY: They have reported to us, to Mr. Lindsey, that they are in fact making progress, and that on a lot of issues, they have got some things that they think are going to work for all the parties represented at the discussions, but they have some very real disagreements and it's not clear whether those disagreements will be resolved.

In fact, I happen -- I happened to run into Attorney General Moore myself. I just had an opportunity. He told me that as of late yesterday and Mr. Lindsey says that's pretty much where things stand at this point.

Elapsed Time 00:39, Eastern Time 13:55

QUESTION: Any reaction on the NATO decision?

MCCURRY: Let me -- yes. Let me first...

QUESTION: Is Attorney General Moore in the White House today?

MCCURRY: I don't know if he's been here today. I ran into him yesterday. And he was here and he's talked to Bruce Lindsey. He also went over and talked to -- there's a group that includes some White House folks, Health and Human Services folks and some Justice Department folks that are getting set to -- if there is anything they need to review -- review it so that the White House can give a more concrete and clearer answer to the question, is this something that the president finds acceptable?

And they're starting to get organized so that they know what the relevant issues are, and I believe that Mr. Myers and Attorney General Moore met with that inter-agency group yesterday over at HHS.

Elapsed Time 00:40, Eastern Time 13:56

So -- but in addition, they were here and they talked to Mr. Lindsey.

QUESTION: But the procedure would be that the state attorneys general would -- and the industry leaders would come to some agreement and then the White

House would review it. It wouldn't be a tripartite type announcement of agreement, would it?

MCCURRY: Our presumption is that they are going to work through all these relevant issues and say, here's what we think works in the best interests of the parties that we represent, the states we represent, the industries we represent, the constituencies we represent.

We would like to present it to the White House for the reaction of the president, and we want to be in a position to evaluate that in a way that is consistent with the president's public health objectives. And so we're going to take a -- have to look at a very detailed look and see, is this going to get us to the president's goal of a reduction by half in the number of kids who are smoking by the year 2000, and will it get us there faster than the regulatory approach, which is subject to litigation, of course?

MCCURRY: The problem and the challenge all along has been to see if we can't arrive at something that avoids protracted negotiations while being consistent with the public health interests that the president has expressed.

Elapsed Time 00:41, Eastern Time 13:57

And they're not -- they're certainly not there at this point.

QUESTION: Well, Mike, just out of curiosity on this tobacco thing -- at the very least -- I mean, to put it mildly, you've been actively monitoring the discussions. What does the White House need to sign off on that it can't at this point say: We know precisely what all the details of this are. We'll either say yea or nay?

MCCURRY: Well, but we don't. I mean, I don't. And I'm certain that the parties themselves don't know what some of the central -- how they're going to answer some of the central questions or if some of the central questions are going to be answered.

QUESTION: But I'm saying, when the deal is done, you're saying that the White House doesn't sufficiently know the details of it now, and it hasn't sufficiently run it by, you know, all of the relevant agencies to say, yes, this is good or bad?

MCCURRY: We have not. And we are -- as I just reported to you -- we are starting to organize so that we would be in a position to be able to do that if they reach that kind of settlement.

Elapsed Time 00:42, Eastern Time 13:58

QUESTION: How close are they?

MCCURRY: Enormously complicated, and they've -- you know, some of the discussions on certain areas have been fairly technical and have not produced clear-cut answers on how you're going to resolve certain questions.

In fact, one reason we have not sort of tried to answer the question, is this going to work, is we're not exactly sure what they're going to end up with at the end of the day. Some of the proposed solutions to certain types of

problems have shifted around during the course of their discussions.

That's one reason why, I think, we've sort of monitored where they are and given them some general parameters about what we think is in the realm of the acceptable and reminded them, you know, overall what our long-term interests are, which are to achieve the public health objectives the president has.

QUESTION: How close are you to consensus on limiting the new NATO members to three?

MCCURRY: Let me first read a statement from the president. We'll have this, I think, in written form, too, also. You've got it on the record.

"After careful consideration, I have decided that the United States will support inviting three countries -- Poland, Hungary and the Czech Republic -- to begin accession talks to join NATO when we meet in Madrid next month.

Elapsed Time 00:43, Eastern Time 13:59

"We have said all along that we would judge aspiring members by their ability to add strength to the alliance and their readiness to shoulder the obligations of NATO membership.

"Poland, Hungary and the Czech Republic clearly meet those criteria and have currently made the greatest strides in military capacity and political and economic reform.

"As I have repeatedly emphasized, the first new members should not and will not be the last. We will continue to work with other interested nations, such as Slovenia and Romania, to help them prepare for membership. Other nations are making good progress, and none will be excluded from consideration.

"We look forward to working with our NATO allies to reach agreement on this important issue."

That statement from the president -- Secretary Cohen has now formally presented to our allies the United States position at the defense ministers meeting that's occurring now in Brussels.

Elapsed Time 00:44, Eastern Time 14:00

We will continue to consult and to work with our alliance partners. And through the good offices of the secretary-general, we expect to arrive at consensus well before the Madrid summit.

QUESTION: That statement seems to assume that the U.S. position will carry the day. How do you know that the U.S. position won't carry the day, and that Slovenia and Romania won't be in the first round?

MCCURRY: I'm tempted to say because this is NATO.

MCCURRY: I won't say that. I'll say because we are confident that as we work with our alliance partners, the United States position will prevail. But remember, because NATO operates in a consensus format and because all 16 governments have to accede to the decisions, it is important to note there is

consensus already around three.

Elapsed Time 00:45, Eastern Time 14:01

There's -- it's clear that in the discussions we've had so far that there are no objections to these three entrants. There is no consensus across the alliance, with respect to additional members, even though there's a great deal of sympathy for the positions of Romania and Slavonia. In fact, the United States itself recognizes the progress they've made. We just think there needs to be additional progress.

QUESTION: Why did the president decide to announce this today? Earlier, the administration said you were going to wait until there was consensus and work internally.

MCCURRY: No, we didn't suggest that. I think we said we would continue to work within the alliance to try to achieve consensus. And sometimes achieving consensus is helped by the United States clarifying publicly its views.

Elapsed Time 00:46, Eastern Time 14:02

We've worked this issue for quite some time in the councils of the foreign ministers at other levels, at which we've had discussion with other members of the alliance. So, I think as we get closer to Madrid, it was proper for the United States to publicly articulate its view.

And of course, the secretary of defense was making this presentation today in Brussels. And it was clearly bound to become public one way or another.

QUESTION: How specifically do Romania and Slovenia fall short?

MCCURRY: Well, they're different in both cases. In the case of Slovenia, they probably still are in a position where there's more they can do to fully demonstrate the military capacity to join the alliance, and to fulfill the military obligations.

I think in the case of Romania, there's still progress needed in both economic areas, in terms of economic liberalization. And then, also some of the political reform process in which would bring them into congruence with some of the other Central European countries that are going to be proposed for membership.

Elapsed Time 00:47, Eastern Time 14:03

This is not to say that they are, you know, lacking. It's to say that the kind of progress that would then qualify them for membership, is something that we clearly hope will evolve that we will nurture. And that one way we will do that, is to continue to support their active participation in the Partnership for Peace program, where they can kind of demonstrate the criteria that we're looking for to qualify for membership.

But again, remember one of the things that we will press for is a very clear decision at the summit that the door is open. And that this is not the last round of new membership candidates from Central and Eastern Europe.

QUESTION: Has the White House had a chance to look at the tax bill yet? And if so, can you give us...

(UNKNOWN): ... NATO (OFF-MIKE)

MCCURRY: Can we finish with NATO? Yeah, OK.

Elapsed Time 00:48, Eastern Time 14:04

QUESTION: (OFF-MIKE) to say that the administration came to realization that the lack of a public, open bottom line was allowing other nations, especially the French, to agitate for four or five?

MCCURRY: Well, maybe a little -- I'd put it a little differently than that. As the decision making in NATO frequently occurs, it's the consultations, the discussion, the dialogue that go on within the -- within the North Atlantic Council is valuable in helping to shape a coming decision. That at the end of the day when United States publicly articulates the position, that that tends to be a way in which things are brought to resolution.

QUESTION: When he met with Kohl last week, did he get any feel that Germany wouldn't stand in the way of three, or continue to push for four?

MCCURRY: The president has had opportunities to review this at his level with some of his counterparts. I'd prefer not to get too directly into those conversations. But he has been part of the process of exploring, examining, understanding better the feelings of other governments.

Elapsed Time 00:49, Eastern Time 14:05

And he has, of course, been making his own positions clear and his own thinking clear to his counterparts.

QUESTION: In his meeting last night with the senators, did they say that they wouldn't oppose just three and not four, even though they wanted four?

MCCURRY: I think the advice and the counsel the president got from members of the Senate last night was very important. By no means is there unanimity within the Senate on this decision.

But I think the Senate clearly understands the president's thinking better partly as a result of the kind of consultation we had last night. And I think the president understands better some of the concerns of leading members of the Senate as they look at the question of expansion.

And I think that generally, we feel that this is a position that the Senate will be supportive of. We understand that there will be some expressions of objection. But we think at the end of the day, given especially the fact that this is going to reduce the cost to U.S. taxpayers of the additional burdens of bringing on new members, that this is going to be a position that the Senate will support when it comes around to ratify an amendment to the treaty.

Elapsed Time 00:50, Eastern Time 14:06

QUESTION: Is the president hoping that the second round of NATO expansion will occur within his administration?

MCCURRY: The Clinton-Gore administration? I think that that's a question that they won't be able to address until they examine how the membership process goes post-Madrid. Remember, this is -- they're not actually, you know, bringing on new members when we meet in Madrid in July. We're actually beginning the process of formally bringing those three countries into the alliance. And that will take some time. And most likely, it will take through 1998 and into 1999.

QUESTION: And also, does he think that the Baltic nations are making similar progress, similar to Slovenia and Romania?

MCCURRY: Absolutely. In fact, there are -- all three Baltic countries are active participants in Partnership for Peace, have been regular participants in some of the joint-training activities.

The Pentagon can tell you more specifically about some of their participation, but -- and in the area of both economic and political reform, they've been making substantial strides. And there's a great deal of progress there.

Elapsed Time 00:51, Eastern Time 14:07

So if you (OFF-MIKE) ordering, you know, the second group in line, but there will be a number of candidates that will most likely prove very attractive to an expanded alliance.

QUESTION: What is the administration's view on whether Secretary Baker ever told Shevardnadze and Gorbachev that there would not be any eastward advance of NATO?

MCCURRY: I've never looked into that question, so...

QUESTION: Don't you think it might be a somewhat crucial one? (OFF-MIKE) represents a reneging on a previous (OFF-MIKE)?

MCCURRY: I think that the process by which we've arrived at the moment of expanding the alliance has been one of the most transparent of all discussions that we've had about foreign policy over the last years. We've done all of these decisions in a very open way.

Elapsed Time 00:52, Eastern Time 14:08

The bringing on of the Partners for Peace, the creation of that program; the modification of what we call the NACC, which was sort of the predecessor -- in some ways, the predecessor organization of the Partnership for Peace -- all involved an evolution of thinking as we dealt with the aftermath in the end of the Cold War.

So history itself, I think, has changed some of the circumstances in which we looked at these questions. I think all the governments have been very clear on what the thinking of the United States government is as we approach the question of adapting NATO for the reality of the challenges we face in the next century.

MCCURRY: So, I doubt there is any misunderstanding about the U.S. thinking on the general question.

QUESTION: Subject change?

MCCURRY: One more.

QUESTION: Mike, has Russia raised this Baker pledge with the United States as something of an issue in its stated objections to NATO expansion?

MCCURRY: Not to my knowledge. And Eric reminds me that I think, if I'm not mistaken, the Secretary Baker has disputed some of the account of how his views were portrayed.

Elapsed Time 00:53, Eastern Time 14:09

I wasn't aware of that. Did he -- when did he do that?

QUESTION: (OFF-MIKE) when the White House asked that government notes of the meeting be made available.

MCCURRY: That's not normally what's done. When the disclosure comes. When they -- when that volume of the fine series on the historic record of the foreign policy of the United States is printed by the Office of Historian at the State Department, I'm sure those notes will be included.

QUESTION: Mike, Representative Gerald Solomon has accused former Commerce Department John Huang of giving classified information to the Lippo Group. Is the Clinton administration seriously investigating this? Is this a serious allegation?

MCCURRY: I do not, I can't tell you for a fact that it is a serious allegation. And I would presume that if there is any truth to it, it is being pursued properly by those investigating.

Elapsed Time 00:54, Eastern Time 14:10

But I wouldn't be the person to comment on it, the Justice Department clearly would be.

QUESTION: Will this be the subject of the president's remarks this afternoon?

QUESTION: White House...

MCCURRY: Say again?

QUESTION: Was the White House informed of the allegations?

MCCURRY: Well, we've seen the news reports about the allegations, sure. I'm not going to talk about. I mean, I'm not sure, nor would I be able to comment on any information related to the type of information the Congressman referred to. That is stuff that we don't comment in public about even if the congressman chooses to.

QUESTION: Mike, what if it says that they were based on intercepted phone conversations?

MCCURRY: That's exactly what I mean.

QUESTION: So, do you want to talk about intercepted phone conversations?

MCCURRY: Have you ever heard me talk about intercepted phone conversations through these microphones, sir?

QUESTION: As far as you know, can a congressman talk about intercepted phone...

MCCURRY: It's highly unusual.

Yes.

QUESTION: To follow up on this. So far, about a half a dozen of the president's former fund raisers or contributors have fled the country.

Elapsed Time 00:55, Eastern Time 14:11

And more than a dozen others including John Huang are taking the fifth on grounds that their testimony can incriminate them. Does that trouble the president that so many people appear to have something to hide?

MCCURRY: Well, I don't know what it suggests. But the president has long felt that people should cooperate. He has publicly urged that people cooperate with the legitimate inquiries that are underway. And yet each of the people that you refer to are represented by counsel. And people are also entitled to legal representation. So, they should really speak through their counsel.

QUESTION: Yes, but Mike, above and beyond whether the White House urges them to cooperate, I'm saying does it bother the president that so many people seem to have something to hide?

MCCURRY: I don't know that he makes a judgment that people "have something to hide". I think he knows that they have lawyers. Their lawyers give great legal advice to each of these people. And they really have to speak for themselves. The president is troubled by the fact that anytime there is not the kind of cooperation that he has requested -- and clearly there may be some question whether there is sufficient levels of cooperation underway.

Elapsed Time 00:56, Eastern Time 14:12

But that is a source of concern to him. He would like these various inquiries to go forward and come to some resolution so that we can move on to what is important -- the solution.

MCCURRY: The solution is going to be campaign finance reform at the end of the day, and the sooner we get to that point, the better.

Yes.

QUESTION: One more question on this, Mike, if I may. Republicans want to offer immunity to some of the lower level players. Does the White House have any objection to that?

MCCURRY: I think that's -- I don't know that we have taken a position on that. I haven't talked to anyone here about that question.

QUESTION: So we can just say that the White House doesn't object?

MCCURRY: I can say we don't have a position on the question. It's really a decision that has to be made by the committees, and...

QUESTION: So if they make the decision that they grant immunity...

MCCURRY: David, I don't want to -- look, the Justice Department may have some interest in that question, too. I just am not taking a position here from the White House on it. But the Justice Department, according to some of the news accounts I've seen, have been in some type of discussion with the committee on that question.

Elapsed Time 00:57, Eastern Time 14:13

So.

QUESTION: But irrespective of whatever Gerald Solomon is making his allegations, his letter, and his public comments, does the White House -- does the Clinton administration have any reason to believe that John Huang was providing classified information to the Lippo Group?

MCCURRY: I'm not going to comment on what the Clinton administration might have reason to believe because it involves, according to the congressman, things that I can't comment about publicly.

Yes.

QUESTION: Mike, is the president concerned that Mr. Huang might have used him or used their friendship for nefarious purposes? I mean, what about that aspect of it?

MCCURRY: Oh, I think we have -- we've said on occasion over time that there -- that the president is concerned any time it appears that someone may have taken advantage of a relationship. I'm not suggesting that's the case with respect to Huang. I think that has to be established by those who are looking into these matters -- appropriately.

And we're not going to second-guess those investigations. But of course, he would take issue with anyone misrepresenting relationships with him or taking advantage of the relationship or employment in government or work within the national committee for purposes that are not proper.

Elapsed Time 00:58, Eastern Time 14:14

Yes.

QUESTION: On a different subject?

On the speech on Saturday, two questions. One -- did the president personally call these seven people and offer -- ask them to serve on the task force?

MCCURRY: I honestly don't know. Do you know.

He has talked -- he knows -- obviously knows a number of them and has talked to a number of them from time to time. Governor Winter, for example, participated in some of the work that went into developing the initiative itself because he's been here at the White House on occasion for some of the meetings, as have I think one or two of the other participants.

But I don't believe he made the calls directly.

Elapsed Time 00:59, Eastern Time 14:15

QUESTION: And secondly, where does the speech-writing stand? Is the outside consultation over? Is the president -- is it written?

MCCURRY: The president's been working with those who are helping him with the speech. In fact, they were doing some work on it today. He's got -- you know -- a draft that probably is three or five or six or seven drafts away from being near final.

And I think Joe's hope is that maybe we can get something of it, at least an advanced text or excerpts tomorrow night, given the deadline problem on Saturday.

QUESTION: How long is it going to be?

MCCURRY: An appropriate length for...

(LAUGHTER)

... for a graduation speech.

Elapsed Time 01:00, Eastern Time 14:16

It'll probably be -- the draft now as it is looks like it's, you know, in the half hour range.

QUESTION: This 4:30 event tomorrow with the board -- the advisory board -- that he's going to do, what exactly will he do then? What will that event be?

MCCURRY: Why don't you let me have Joe do that?

LOCKHART: It actually speaks a little bit to George's question. I don't know if -- to what extent he's spoken to each of the members, but he did ask for some time before they went out to San Diego to get together with them.

The group is going to travel out to San Diego for the speech, and so we put...

QUESTION: (OFF-MIKE)

LOCKHART: Yes. And so he wants some time before they got, you know, out of San Diego, to spend some time. It's more of an organizing get-together. It will give them some time to talk a little bit and then they'll go out tomorrow, tomorrow evening.

QUESTION: And will the president be making a public appearance with them as well tomorrow?

LOCKHART: Tomorrow?

QUESTION: Will this -- yes.

LOCKHART: No, just -- It will be just the meeting here and then they will go to Andrews to go out to San Diego.

QUESTION: And will there be coverage of this meeting?

LOCKHART: Yes, we'll do, you know, some sort of pull at the top of it.

QUESTION: (Inaudible)

LOCKHART: I don't think so, no. I am not sure that -- I know that there is one who is from Washington.

But they will all be making their way here. I mean, I also know Chris Edley's in town on another matter. So...

QUESTION: Mike, I noticed on the schedule for...

MCCURRY: You know, I wouldn't be surprised too if they all end up kibitzing on the speech at the last minute too. That would not surprise me too much. It just may tamper with our advanced text concept.

Elapsed Time 01:01, Eastern Time 14:17

(LAUGHTER)

QUESTION: What's the nature of the president's...

MCCURRY: I hadn't thought of that until just now.

QUESTION: Are you lying?

QUESTION: What's the nature of the presidential remarks to the Institute on Oceanography that he's talking to after the commencement speech -- I noticed on the schedule?

LOCKHART: It's a luncheon.

MCCURRY: Is that a luncheon probably with local...

LOCKHART: Yes, it's a lunch sort of reception of the people the university's put together. It will just be a short (OFF-MIKE).

MCCURRY: No new pronouncements on oceanography or global warming or...

QUESTION: What about this afternoon...

QUESTION: Frictions between the various marine species or...

(LAUGHTER)

MCCURRY: Pacific salmon issues.

QUESTION: Are you going?

MCCURRY: Atlantic scallops issues. I've got a family event in New Jersey. Mr. Lockhart is going to be in charge.

QUESTION: What's today's speech -- this afternoon's -- this topic?

MCCURRY: They were still working on it. It will be kind of for the members of the Business Roundtable. The president's reflection on the status of the economy, how we got to the place where we are today, the contributions they are making to the health of the economy, to the success of welfare reform.

Elapsed Time 01:02, Eastern Time 14:18

He will also talk about the importance of free trade and the overall economic progress that we have seen over the last four and a half years and will specifically talk about the importance of fast track authority and normal trade relations with China.

And then I think the plan is for him to then take a little detour -- This is where you can wake up and pay attention -- into the tax bill and have a little more to say on the tax bill. That's the plan. Now, I meant that we were still waiting to get the president's approval for that.

QUESTION: And this at her briefing tomorrow?

MCCURRY: The big hitters that want a brief are insisting that they can't do it until Monday which means that the minor league briefers, perhaps me, will probably have to try to give you a little more for those of you that have got to write for the weekend. But Secretary Albright and...

QUESTION: Monday will be the big players?

Elapsed Time 01:03, Eastern Time 14:19

MCCURRY: We are trying to get Secretary Albright and Sandy and Dan Turillo (ph) who's the sherpa and Secretary Rubin and maybe we will add a couple of others coming along and entertain us.

QUESTION: Mike, this is one of those for the record questions if you will, why has it been so long since we've had an opportunity to have any kind of exchange between reporters in this room and the president?

MCCURRY: We haven't had a pool spray recently but part of the reason for that is the president -- and I apologize to those of you who have not been part of

this. He's been doing a number of interviews and you know, the way we have to conduct this adversarial and I hope amicable relationship is not only through press conferences which we are having in just over a week, pool sprays which we do from time to time, but I also think it is important for the president to have opportunities to talk one on one, individually with news organizations and we have been doing quite a lot of that.

Elapsed Time 01:04, Eastern Time 14:20

QUESTION: Have there been events that have happened here over the past couple of weeks since our last news conference in London that traditionally have been pool events, interviews aside, visiting foreign leaders, congressional delegations, other events?

MCCURRY: We handle different kinds of events with different types of press coverage arrangements all the time.

QUESTION: You're not trying to keep us away from the president, are you?

MCCURRY: No, because I mean, we're trying to give some individual news organization some opportunity to do more enterprising and exclusive stuff to, you know, frankly, to get a little bit of play.

QUESTION: The morning interview (OFF-MIKE) one subject?

MCCURRY: We got -- we can't tell news organizations what to ask. We say -- we sort of say the president's interested in talking about X, Y or Z, obviously. You know, we've set up some interviews with respect to the race initiative. And he's got something to say on that. And we're trying to give some people a glimpse of his thinking before the speech on Saturday.

But you know, people -- it's a free country, and a free press is entitled to ask whatever questions they freely arrive at.

QUESTION: Well, I'm glad of that.

(LAUGHTER)

MCCURRY: It's one of the hallmarks of our democracy. It's one of the things that make us strong.

Elapsed Time 01:05, Eastern Time 14:21

It's one of the reasons why we gather here every day.

LANGUAGE: ENGLISH

LOAD-DATE: June 13, 1997

LEVEL 1 - 132 OF 166 STORIES

The New York Times, June 5, 1997

June 5, 1997, Thursday, Late Edition - Final

SECTION: Section A; Page 1; Column 4; National Desk

LENGTH: 1011 words

HEADLINE: G.O.P. BACKING OFF A DEAL TO RESTORE AID TO IMMIGRANTS

BYLINE: By ROBERT PEAR

DATELINE: WASHINGTON, June 4

BODY:

House Republicans today backed away from their commitment to restore Federal aid for certain legal immigrants, prompting the Clinton Administration to complain that the Republicans were violating the bipartisan budget agreement reached just five weeks ago.

In addition, a proposal announced today by House Republicans would override a recent White House ruling that state governments must pay the minimum wage to welfare recipients participating in workfare programs.

Administration officials denounced both proposals, which the Republicans have added to a comprehensive bill intended to balance the Federal budget.

Vice President Al Gore said the proposals on immigrants were "harsh, unfair and unnecessary." Moreover, he said, "they violate the terms of the bipartisan budget agreement by failing to restore a minimal safety net" for legal immigrants who have not become citizens. Mr. Gore said the proposals "would cut off 100,000 severely disabled immigrants who would receive benefits under the budget agreement."

The agreement, reached on May 2, was a framework for legislation to balance the budget. Republicans are now filling in the details, and they said today that they did not feel obliged to accept every item in the agreement.

Representative Sander M. Levin of Michigan, the ranking Democrat on the House Ways and Means subcommittee that writes welfare legislation, said the proposals on immigrants "clearly violate the budget agreement." Accordingly, he said, "this bill is heading toward confrontation instead of bipartisan accord."

Representative E. Clay Shaw Jr. of Florida, the chief author of the 1996 welfare law, said the Republicans were improving the budget agreement, by guaranteeing benefits for certain elderly immigrants rather than for those who become disabled.

The Republicans are playing with political fire in restricting benefits for legal immigrants. Their proposals have proved unpopular in parts of Florida, Texas and other states with many immigrants. And the party itself is divided, with some Republicans like Mayor Rudolph W. Giuliani of New York urging Congress to restore aid to legal immigrants.

The New York Times, June 5, 1997

After learning of the new proposal by Congressional Republicans, Colleen A. Roche, a spokeswoman for Mayor Giuliani, said, "The proponents of this change should be ashamed of themselves for trying to play off the elderly against the disabled." Lobbyists for the elderly echoed that comment.

Supporters of legal immigration, including Hispanic groups, Jewish organizations and Roman Catholic bishops, criticized the Republican proposals as a retreat from the budget agreement.

The Republicans' welfare proposals are much more contentious than their Medicare proposals, which were unanimously approved tonight by the Ways and Means Subcommittee on Health.

The welfare law signed by Mr. Clinton on Aug. 22, 1996, cut off many Federal benefits for noncitizens. Restoring some of those benefits is a top priority for the President.

The Congressional Budget Office estimates that 500,000 legal immigrants will lose Supplemental Security Income benefits this summer because of the law. The program, for the indigent elderly and the disabled, pays a maximum of $484 a month for an individual and $726 a month for a couple.

The budget agreement, negotiated by Mr. Clinton and Congressional Republican leaders, explicitly promised to "restore Supplemental Security Income and Medicaid eligibility for all disabled legal immigrants who are or become disabled and who entered the United States prior to Aug. 23, 1996."

The new Republican bill would restore benefits only for those who were actually receiving benefits on Aug. 22, not for those who were in the United States then and later become disabled.

Many immigrants have relatives or other "sponsors" in the United States who agreed to support them. Under today's Republican proposal, an immigrant could not receive Supplemental Security Income payments if the sponsor's income was more than 50 percent above the official poverty level. A family of three would meet this test if it had income exceeding $18,775 a year.

Republicans said they assumed that such a family could take full financial responsibility for a disabled immigrant. Vice President Gore said that the assumption was unwarranted.

When Mr. Clinton signed the welfare bill, he said he would fight to restore benefits for legal immigrants. Republicans like Mr. Shaw contend that the budget agreement went too far. "Supplemental Security Income has become a pension plan for third-world countries," Mr. Shaw said today.

Mr. Shaw also said that Republicans never intended for the minimum wage to apply to workfare participants.

Workfare programs require welfare recipients to work in return for their benefits. Governors of both parties said that any requirement for them to pay the minimum wage would vastly increase the cost of their work programs.

The Republicans' new proposal says that welfare recipients working for a public agency or a nonprofit organization shall not be considered employees

for purposes of the Fair Labor Standards Act or any other Federal law. The minimum wage -- now $4.75 an hour, rising to $5.15 on Sept. 1 -- is part of the labor standards law.

The Republican proposal says that states may count welfare, food stamps, Medicaid, child care and housing subsidies as income for people in workfare programs. States divide the amount of such income by the minimum wage to determine the number of hours that a person may be required to work for a public agency or a nonprofit organization.

It is easier for states to meet the law's work requirements if they can count government benefits as income. But Elena Kagan, the President's deputy assistant for domestic policy, said: "The Administration strongly opposes these provisions. They are clearly outside the scope of the budget agreement. They violate the principle that workfare participants, like other workers, should get the benefit of the minimum wage and other worker-protection laws."

LANGUAGE: ENGLISH

LOAD-DATE: June 5, 1997

LEVEL 1 - 133 OF 166 STORIES

Reuters North American Wire

March 8, 1997, Saturday, BC cycle

LENGTH: 576 words

HEADLINE: Clinton says government will hire some off welfare

BYLINE: By Steve Holland

DATELINE: WASHINGTON

BODY:
President Clinton said Saturday the federal government will hire some people off the welfare rolls to entry-level jobs to set an example in a national drive to find work for America's downtrodden.

In his weekly radio address, Clinton directed heads of agencies and departments to prepare detailed plans for hiring welfare recipients. He said the plans should be ready for presentation at a special Cabinet meeting in one month.

He said Vice President Al Gore would oversee the effort.

Under a welfare law Clinton signed in August, able-bodied people on welfare must find jobs in two years. Clinton's goal is to move 2 million from welfare to work in four years. He wants the private sector to hire the most, along with non-profit organizations and religious groups.

But he said the national government, as the country's largest employer, "must do its part and set an example."

"So today I am committing a national government action plan to hire people off welfare," he said.

A White House domestic policy adviser, Elena Kagan, said the jobs in mind earn about $ 12,500 a year and include low-skilled positions such as clerks, messengers and forestry jobs. Most would be outside of Washington, D.C.

She said there was no specific number of people the federal government would hire, but said agencies and departments may offer target numbers in the hiring plans they submit to the president.

Agencies are to operate under the federal Worker-Trainee Program in order to train people quickly and put them to work. Officials said it is an underused program, with only 120 people hired under it in the 1996 budget year.

Experts said the initiative could give rise to some problems because those doing the hiring would have to put welfare recipients ahead of people with perhaps more job experience in the competition for what are generally considered to be good-paying jobs.

"It's tricky," said Gary Burtless, a welfare expert at the Brookings Institution. "On the one hand, in many of these positions, welfare recipients do have a clear shot at doing a fine job in the position."

"The problem is we also are a society that prizes equity and fairness in hiring," he said. "Probably most people feel that if you have five applicants, the fairest way to pick them is to pick the one who is the best. You don't want to go to the back of the line, pick that person and put them at the front of the line."

Clinton said the government would act in "the way we want all employers to act- demanding high performance from workers, but going the extra mile to offer opportunity to those who have been on welfare and want to do something more with their lives."

He said agencies and departments should identify what jobs welfare recipients would fill, how to recruit them and how to ensure they work hard and earn a chance at career status if they perform well for three years.

He said 2.6 million people were moved off welfare rolls to jobs in the last four years, but the task ahead will be tougher.

"Frankly, we must recognize that many of these people will be harder to reach and will need more help than those who moved off the rolls in the past four years," he said.

Clinton also asked agencies to explore and report on ways to help low-income federal employees gain access to help already available such as the Earned-Income Tax Credit, which is available to individuals with incomes up to $ 25,760 and have at least one child living at home.

LANGUAGE: ENGLISH

LOAD-DATE: March 09, 1997

LEVEL 1 - 134 OF 166 STORIES

Reuters World Service

March 8, 1997, Saturday, BC cycle

LENGTH: 577 words

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DATELINE: WASHINGTON, March 8

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LANGUAGE: ENGLISH

LOAD-DATE: March 09, 1997

LEVEL 1 - 135 OF 166 STORIES

The Commercial Appeal (Memphis, TN)

March 2, 1997, SUNDAY, FINAL EDITION

SECTION: NEWS, Pg. A9

LENGTH: 295 words

HEADLINE: CLINTON HOPES GOVERNMENT CAN HIRE FROM WELFARE ROLLS

BYLINE: Stephen Barr The Washington Post

DATELINE: WASHINGTON

BODY:
President Clinton, who has frequently urged business leaders to employ welfare recipients, is looking for ways that the administration might do some hiring off the welfare rolls.

Because of normal turnover and the need for extra workers in the summer, the government hires thousands of park laborers, mail and file clerks, equipment operators and health care aides each year.

Administration officials say Clinton is exploring whether any of those jobs could be filled by people on welfare.

The White House is also considering having federal offices reach out to people losing welfare benefits under the reform law passed by Congress last year. Agencies, for example, could help provide day care and transportation for such workers, the officials said.

Elena Kagan, deputy assistant to the President for domestic policy, said Clinton has not made a decision.

''There are questions about how to do this,'' she said. ''When it comes to the government and governing hiring, there are lots of rules and regulations and complexities. Part of the challenge is finding your way through those, (so) that really achieves the goal to hire welfare recipients.

''It's not an easy undertaking, but the President is committed to doing it and will do it,'' she said.

In theory, the government could make a significant contribution. The task of making federal workers out of welfare recipients would also present a huge challenge, however.

The government hired about 200,000 workers in fiscal 1996, but 71 percent of those were for temporary jobs. Some of these positions led to permanent civil service positions, but the White House will likely have to assess whether such part-time or seasonal work would provide sufficient income for welfare recipients.

LOAD-DATE: March 5, 1997

LEVEL 1 - 136 OF 166 STORIES

The Washington Post

March 01, 1997, Saturday, Final Edition

SECTION: A SECTION; Pg. A07

LENGTH: 704 words

HEADLINE: Clinton Seeking Ways for Government To Put Welfare Recipients on Payroll

BYLINE: Stephen Barr, Washington Post Staff Writer

The Washington Post, March 01, 1997

BODY:

President Clinton, who has frequently urged business leaders to employ welfare recipients, is himself looking for ways that the administration might do some hiring off the welfare rolls.

Because of normal work force turnover and the need for extra hands during the summer, the government hires thousands of forestry and park laborers, mail and file clerks, equipment operators and health care aides each year. Administration officials say Clinton is exploring whether any of those jobs could be filled by people on welfare.

The White House is also considering having federal offices around the country reach out to persons losing welfare benefits under the reform law passed by Congress last year. Agencies, for example, could help provide day care and transportation for such workers, the officials said.

Elena Kagan, deputy assistant to the president for domestic policy, said the president has not made a decision. "There are questions about how to do this," she said. "When it comes to the government and governing hiring, there are lots of rules and regulations and complexities. Part of the challenge is finding your way through those, [so] that really achieves the goal to hire welfare recipients.

She added, "It's not an easy undertaking, but the president is committed to doing it and will do it."

In theory, anyway, the federal government could make a significant contribution since it is one of the largest employers in the country. The task of making federal workers out of welfare recipients would also present a huge challenge, however.

The government hired about 200,000 workers in fiscal 1996, but 71 percent of those were for temporary jobs. Some of these positions lead to permanent civil service positions, but the White House will likely have to assess whether such part-time or seasonal work would provide sufficient income for welfare recipients.

The White House also may have to allay concerns that the government would be creating a "jobs program" that favored welfare recipients. Kagan disputed that suggestion, saying, "I don't think we see political sensitivity in asking government to do what the president is asking the private sector to do."

White House domestic policy adviser Bruce Reed and Office of Personnel Management Director James B. King are studying a set of options to present Clinton.

One option would expand the government's "worker-trainee" program, started in 1968. The program allows agencies to quickly and easily hire low-skilled persons into jobs that provide training and development. After three years, the trainees can be converted to regular, career civil service status.

Welfare recipients also could be hired under the government's Federal Student Educational Employment Program, which provides career-related work experiences that may lead to permanent federal jobs. The program was designed to attract high school and vocational students into the government. Wages range from $

13,000 to $ 17,000 a year, with some agencies providing tuition assistance to the students.

A third option under review by Reed and King calls for the creation of a new hiring program so that welfare recipients would get jobs without competing against other civil service applicants.

To ease commuting woes, officials said, welfare recipients could also be allowed to take part in the government's Fare Subsidy Program, which allows agencies to subsidize the transportation costs of employees. The government, through the General Services Administration, operates day-care centers, a program that also might be expanded to include welfare mothers.

Federal agencies have cut staffing by about 250,000 workers since Clinton took office, as part of the administration's effort to downsize government. A number of agencies also face shrinking budgets in future years, a prospect that may complicate the hiring or replacement of full- and part-time workers.

Agencies will probably need extra money from Congress to train welfare recipients, said Robert M. Tobias, president of the National Treasury Employees Union. "Right now, the federal government is in a very difficult position in providing the necessary training to current employees," he said.

LANGUAGE: ENGLISH

LOAD-DATE: March 01, 1997

LEVEL 1 - 137 OF 166 STORIES

The National Journal

February 8, 1997

SECTION: PEOPLE; Pg. 290; Vol. 29, No. 6

LENGTH: 1974 words

BYLINE: Louis Jacobson

BODY:

RECONFIGURING

William W. Bailey and Dack W. Dalrymple have opened up Bailey & Dalrymple, a Washington-based consulting firm that will specialize in federal and state lobbying and in counseling on food, drug and health-related regulatory matters. Both come from Bailey & Robinson, a now-defunct lobbying unit of New York City-based Ketchum Public Relations.

Bailey had been a founding partner and managing director of Bailey & Robinson. Dalrymple held dual senior vice president posts for Bailey & Robinson and for Ketchum Public Relations.

In addition, Gregory Fisher, previously legislative and regulatory counsel with Bailey & Robinson, is joining the new

firm as vice president.

AT THE WHITE HOUSE

Former White House associate counsel Elena Kagan has been named deputy assistant to the President for domestic policy. Kagan, who fills a long-vacant position, is succeeded by Bill Marshall, a constitutional law professor from Case Western Reserve University.

CORPORATE LIFE

Jennifer Minarczik has been named coordinator of political affairs in the Washington office of GTE Corp., the Stamford (Conn.)-based telecommunications company. Minarczik had been working with the Dole-Kemp campaign on behalf of the Virginia Republican Party. She succeeds Pamela Powers, who was promoted to director of congressional relations, succeeding the recently retired Russ Campbell.

AROUND THE AGENCIES

Army Gen. John M. Shalikashvili announced his intention to retire on Sept. 30 after serving the traditional two terms as chairman of the Joint Chiefs of Staff. No successor has been named yet.

Linda Daschle is giving up her post as acting head of the Federal Aviation Administration to be a senior policy adviser with the Washington office of Baker, Donelson, Bearman & Caldwell, a Memphis (Tenn.)-based law firm. Barry L. Valentine, the FAA's assistant administrator for policy, planning and international aviation, will take over at the agency's controls for now.

Two new Treasury Department hands. Kenneth J. Krupsky, who was most recently a partner at the Washington law firm of Arnold & Porter, is the new deputy assistant secretary for tax policy, succeeding Glen Kohl, who has joined a law firm in Palo Alto, Calif. Earlier, Krupsky had been an attorney in the department's office of tax legislative counsel.

And John Karl Scholz has been named deputy assistant secretary for tax analysis, succeeding Eric Toder, who's now teaching economics at the University of Michigan (Ann Arbor). Scholz had been an associate economics professor at the University of Wisconsin (Madison).

After almost five years on the job, Richard Carlson is stepping down as president and chief executive officer of the Corporation for Public Broadcasting. He has not announced plans, and there's no word on a successor.

POLITICAL STRIPES

New Republican National Committee chairman Jim Nicholson has tapped James C. (Chip) DiPaula as deputy chief of staff. DiPaula managed Nicholson's campaign for the post and was an assistant manager of the 1996 Republican National Convention in San Diego. Earlier, he was executive director of MacKenzie Retirement Services in Baltimore.

CONSULTING GAME

Patrick J. Mitchell has been named a principal in the government relations division of Sher & Blackwell, a Washington-based law firm. It's a new position, and the division's name is changing to Sher & Blackwell/Pike & Mitchell. A former chief of staff to Rep. Louise M. Slaughter, D-N.Y., Mitchell had most recently been a partner and general counsel with the Dutko Group Inc., a Washington-based lobbying firm. No word on a successor at Dutko.

Lee O. Fuller joins Van Scoyoc Associates, a Washington-based lobbying firm, in a new position as senior legislative associate. Fuller had been vice president of Jellinek, Schwartz and Connolly Inc., an Arlington-based lobbying shop. No word on a successor.
The Washington-based lobbying group Durenberger & Foote, Public Policy Partners, L.L.C., has hired Mary E. Hayter to a new position as senior legislative associate. A onetime senior health aide to retired Rep. Steve Gunderson, R-Wis., Hayter had most recently been a legislative assistant to Rep. Jim Ramstad, R-Minn. No word yet on a successor.

MEDIA PEOPLE

The Progressive, a monthly based in Madison, Wis., has opened a Washington office headed by Ruth Coniff, who had been the magazine's managing editor. Her old position will not be filled. Also opening an outpost in the capital is Mother Jones, the San Francisco-based bimonthly. Rachel Burstein, a Washington-based investigative reporter for the magazine, is heading the office, joined by senior editor Chris Orr, who held the same position in San Francisco.
Paul N. Wojcik is succeeding William A. Beltz as chief executive officer of the Bureau of National Affairs Inc., a Washington-based publisher. Wojcik, who had been president and chief operating officer, will retain his title as president. Beltz remains chairman of the board and editor-at-large.
Three former figures on U.S. News & World Report's masthead--which has been substantially revised since James Fallows became top editor--have moved on. Brian Duffy, formerly an assistant managing editor at the newsweekly, is now deputy national editor of The Washington Post. He replaces Marilyn Thompson, who was named The Post's investigative editor. Duffy's old job at U.S. News was filled by Peter Carey, who was a senior editor.
U.S. News's former deputy editor Christopher Ma is now vice president and executive producer of the Washington Post Co.'s digital and electronic media subsidiary, Digital Ink Co. It's a new position. Ma was not replaced. And former senior writer Ed Pound is now a reporter with USA Today. Pound was not directly replaced at U.S. News.

INTEREST GROUPS

Janice Weinman is the new executive director of the American Association of University Women. Weinman--most recently the executive vice president of the College Board, a New York City-based educational nonprofit--succeeds Anne L. Bryant, who left in July to join the Alexandria (Va.)-based National School Boards Association as executive director.
Sherri G. Zedd is the new director of government relations at the American Iron and Steel Institute, succeeding Jim Link, who is a new vice president in Washington for East Rutherford (N.J.)-based MWW/Strategic Communications Inc. Zedd was an associate with Neece, Cator, McGahey & Associates, a Washington-based lobbying firm, where she will not be directly replaced. During the mid-1980s, Zedd was legislative director to Rep. (and now House Speaker) Newt Gingrich, R-Ga.

IN THE TANKS

The National Academy of Social Insurance, a Washington-based nonpartisan research group, has hired Jill Bernstein to a new

position as senior research associate. Bernstein had most recently been with the federal Agency for Health Care Policy and Research as deputy director of the Office of Planning and Evaluation as well as acting associate director of the Center for Outcomes and Effectiveness Research. No word yet on a successor.
Thomas H. McCloud, most recently chief of staff to Rep. Sheila Jackson Lee, D-Texas, has been named vice president of Public Technology Inc., the research and development arm of the National League of Cities, the National Association of Counties and the International City/County Management Association. McCloud, who will be in charge of research and membership programs, succeeds Arthur E. Morris, who is relocating to Lancaster, Pa. Filling McCloud's old slot in Lee's congressional office is Kathi Wilkes, who had most recently been an independent business consultant.
OBITUARIES
Louis E. Martin, a leader in the black community and an adviser to Presidents Kennedy, Johnson and Carter, died of pneumonia on Jan. 27 in Orange, Calif. He was 84. Acting mostly behind the scenes, Martin first achieved presidential-level influence as deputy chairman of the Democratic National Committee in the 1960s.
George W. Mitchell, vice chairman of the Federal Reserve Board from 1973-76, died at Georgetown University Hospital on Jan. 25 at the age of 92. Appointed to the Fed by President Kennedy, Mitchell served there until his retirement in 1976.

LANGUAGE: ENGLISH

LOAD-DATE: February 12, 1997

LEVEL 1 - 138 OF 166 STORIES

January 20, 1997

SECTION: WASHINGTON BRIEF; Pg. A9

LENGTH: 264 words

HEADLINE: No. 5 Takes His Place On The Hot Seat

BYLINE: HARVEY BERKMAN

BODY:
AND PEOPLE THOUGHT Charles F.C. Ruff was crazy 19 months ago when he ended his 13-year partnership at Covington & Burling to helm the beleaguered District of Columbia's corporation counsel's office.

They hadn't seen nothing yet.

On Jan. 7, President Clinton named the former Watergate special prosecutor and U.S. attorney as his fifth White House counsel in four years, handing him the sensitive post at a moment of legal peril unusual even by Clintonian standards: Independent Counsel Kenneth W. Starr is expected to complete his multifaceted probe of presidential affairs soon, and the Senate is slated to open hearings in February on fund raising by the Democratic Party, the president and his legal defense fund.

Mr. Ruff will take over a revamped shop. Departing with current counsel Jack Quinn are his deputy, Kathleen M.H. Wallman, a former chief of the FCC's Common Carrier Bureau, who will become chief of staff and counselor to the National Economic Council; associate counsel Elena Kagan, a professor on leave from the University of Chicago Law School, who will become deputy director of the Domestic Policy Council, and associate counsel David B. Fein, a former New York federal prosecutor, who will become a partner at Wiggin & Dana, a 105-lawyer firm in New Haven, Conn. Associate Counsel Cheryl D. Mills has been promoted to deputy to replace Ms. Wallman.

Mr. Ruff says he didn't hesitate when asked. "When the president of the United States says he thinks you can be of assistance to him, you say, 'Yes, Mr. President,' and that's what I did," he said.

GRAPHIC: Photo, From the Frying Pan: Charles F.C. Ruff left a big-firm partnership, first to be D.C.'s corporation counsel and now to become White House counsel. AP/WIDE WORLD PHOTO

LANGUAGE: ENGLISH

LOAD-DATE: January 30, 1997

LEVEL 1 - 139 OF 166 STORIES

The Bulletin's Frontrunner

January 15, 1997, Wednesday

SECTION: WASHINGTON NEWS

LENGTH: 374 words

HEADLINE: Personnel: FEC; Jesse Jackson; Park Service; WH Staff.

BODY:
The W. Post (1/15, A17, Kamen) reported, President Clinton renominated John Warren McGarry to another four-year term at the Federal Election Commission. McGarry has been there since 1978. The Post said the nomination "stunned the public interest crowd, which had been lobbying the White House to name new commissioners to the FEC."

The Post added that some are nervous over rumors that Jesse Jackson is in line to become Clinton's special envoy to Africa.

The W. Post reported National Park Service Director Roger Kennedy resigned Monday pending confirmation of a successor. In line to replace him are: Mike

Finley, formerly superintendent at Yosemite; Denis Galvin, associate director of the Park Service; and Robert Stanton, former director for the national capital area.

The W. Post reported that at the White House: Maria Echaveste, now head of the wage and hour division at Labor, is the favorite to take over the public liaison office when Alexis Herman goes to Labor. Kumiki Gibson, "a former civil rights prosecutor at the Justice Department and more recently counsel to Vice President Gore, is leaving to return to private practice." Paige Reffe, director of advance, has returned to practicing law and deputy Dan Rosenthal has moved up to director. In the counsel's office, Bill Marshall, a constitutional law professor at Case Western Reserve University, has replaced Elena Kagan. Cheryl Sweitzer, executive assistant to Jack Quinn, will become confidential assistant to Solicitor General Walter Dellinger.

The W. Post reported that on the Hill, James L. Clarke, a longtime House aide and most recently staff director to the Committee on Government Reform and Oversight, has been named vice president of government affairs for the American Society of Association Executives. Craig G. Veith, former communications director for the National Republican Congressional Committee, will become managing director of the public affairs firm American Strategies.

LANGUAGE: ENGLISH

LOAD-DATE: June 20, 1997

LEVEL 1 - 140 OF 166 STORIES

The Washington Post

January 15, 1997, Wednesday, Final Edition

SECTION: A SECTION; Pg. A17; THE FEDERAL PAGE; IN THE LOOP

LENGTH: 943 words

HEADLINE: A Familiar Face for a Fresh Look

BYLINE: Al Kamen, Washington Post Staff Writer

BODY:
President Clinton, firing the first shot in a war with Congress over who is more serious about campaign finance reform, has finally nominated someone to fill a long-standing vacancy on the Federal Election Commission.

The Republicans didn't hear the salvo -- neither did most anyone else -- because the White House slipped the nomination in with a bunch of Cabinet picks and other folks sent up to the Senate on Jan. 7.

And the nominee, the new fresh blood to give renewed vigor and take a different look at campaign finance issues? Why, it's 74-year-old John Warren McGarry, renominated to another four-year term. McGarry has been there since 1978.

News of the little-noted move stunned the public interest crowd, which had been lobbying the White House to name new commissioners to the FEC.

"The president has been saying he was very serious about campaign finance reform," said Ann McBride, president of Common Cause. "One of his first tests was going to be who he nominated to the FEC. Well, he has flatly failed his first test."

She added: "What he has done has signaled that it's going to be business as usual at the FEC. The first signal is that he is going to renominate the people who have failed in their enforcement duties."

"It doesn't bode well," agreed Lisa Rosenberg, director of FEC Watch, a project of the Center for Responsive Politics.

With McGarry's nomination at the Senate, can the renomination of 68-year-old Republican Joan D. Aikens, who's been at the FEC since 1975, be far behind?

Close to Home

On the diplomatic front, scuttlebutt at Foggy Bottom has it that a senior Foreign Service type is in line to replace Peter Tarnoff as undersecretary for political affairs, the No. 3 job at the department.

Well, let's see. The senior-most are J. Stapleton Roy, now in Indonesia and likely to stay there for a little while, Frank G. Wisner, now in India and also likely to be there for a bit, and former ambassador to everywhere Thomas R. Pickering, who's conveniently located right here in Washington these days. Bet on the hometown kid.

Meanwhile, the diplo crowd is said to be a tad nervous over word that Jesse L. Jackson is in line to be Clinton's special envoy to Africa.

Democratic Thinking

And speaking of the State Department, a former contender for secretary, former Senate majority leader George J. Mitchell, now Clinton's emissary to the peace talks in Northern Ireland, apparently has found time to write a book of ruminations about why democracy succeeds and communism failed. The 274-page book, to be published in May, "focus[es] on the lives of Karl Marx, Franklin D. Roosevelt, and Mikhail Gorbachev," according to the little blurb in the front.

The book began as a proposal by Mitchell about five years ago, says editor Philip Turner, who saw it when he was working at another publisher. But not much happened until last year.

Mitchell received a modest advance -- we're not talking big, six-figure Hollywood numbers -- for the effort, which Turner said is "seen as a major book," by the publisher. Wudda been more major had Mitchell been named secretary of state.

The title? "Not for America Alone," which it certainly isn't. The publisher, Kodansha America Inc., is a subsidiary of Kodansha International of Tokyo.

Parking Space

As expected, National Park Service Director Roger G. Kennedy resigned Monday pending confirmation of a successor. The body's hardly cold but the successor list includes Mike Finley, formerly superintendent at Yosemite and more recently seen chatting with Clinton at Yellowstone, where he's now in charge; Denis P. Galvin, associate director of the Park Service; and Robert G. Stanton, former director for the national capital area.

White House Wanderings

At the White House, Maria Echaveste, now head of the wage and hour division at Labor, looks good to take over the public liaison shop from Alexis Herman. Kumiki Gibson, a former civil rights prosecutor at the Justice Department and more recently counsel to Vice President Gore, is leaving to return to private practice but hasn't picked which firm. Paige Reffe, director of advance, has returned to practicing law and deputy Dan Rosenthal has moved up to director. In the counsel's office, Bill Marshall, a constitutional law professor at Case Western Reserve University, has replaced Elena Kagan. Cheryl Sweitzer, executive assistant to Jack Quinn, is moving to the Justice Department to be confidential assistant to Solicitor General Walter E. Dellinger.

Leaving the Hill

James L. Clarke, a longtime House aide and most recently staff director to the Committee on Government Reform and Oversight, has been named vice president of government affairs for the American Society of Association Executives. Craig G. Veith, former communications director for the National Republican Congressional Committee, has signed on as managing director with public affairs firm American Strategies.

On Injured Reserve

Senate Foreign Relations Committee staff director James W. "Bud" Nance is recuperating nicely after a nasty auto accident just before Christmas. Word is he's expected back soon, though he's running the show from the hospital anyway. He'd better hurry, the staff warns, because there are reports former U.N. chief Boutros Boutros-Ghali is eyeing the job.

Ringing True

A recent column said Sen. Strom Thurmond (R-S.C.), could have rough weather in a presidential bid in 2000 because of his divorce. But Loop Fan Mary Lois Lind of Columbia, S.C., writes to note that he's only separated. So clearly it's clear sailing for Thurmond to the White House.

LANGUAGE: ENGLISH

LOAD-DATE: January 16, 1997

LEVEL 1 - 141 OF 166 STORIES

Public Papers of the Presidents

January 10, 1997

CITE: 33 Weekly Comp. Pres. Doc. 32

LENGTH: 583 words

HEADLINE: Digest of Other White House Announcements

HIGHLIGHT:
The following list includes the President's public schedule and other items of general interest announced by the Office of the Press Secretary and not included elsewhere in this issue.

BODY:

January 4

The President declared major disasters in California and Idaho and ordered Federal aid to supplement State and local recovery efforts in the areas struck by severe storms, flooding, and mud- and landslides beginning December 28 and continuing.

January 5

The President and Hillary and Chelsea Clinton returned to Washington, DC, from St. Thomas, U.S. Virgin Islands.

January 6

In the morning, the President had a telephone conversation with Chancellor Helmut Kohl of Germany concerning NATO expansion and relations between Russia and the West.

The President announced his intention to nominate Alan M. Hantman to be the Architect of the Capitol.

The President announced his intention to nominate Donald Rappaport to be Chief Financial Officer of the Department of Education.

January 7

In the morning, the President met with Senator Daniel Patrick Moynihan in the Oval Office to discuss issues facing the 105th Congress.

In the afternoon, the President had a telephone conversation with Newt Gingrich to congratulate him on winning reelection to a second term as Speaker of the House of Representatives. The President also placed calls to Senate Majority Leader Trent Lott, Senate Minority Leader Thomas S. Daschle, and House Minority Leader Richard A. Gephardt.

The President announced his intention to nominate Susan E. Trees to the National Council on the Humanities.

The White House announced that the President will meet with United Nations Secretary-General Kofi Annan in the Oval Office on January 23.

The White House announced that the President appointed Charles Ruff to succeed Jack Quinn as Assistant to the President and Counsel to the President early next month. The President also appointed: Cheryl D. Mills to be Deputy Assistant to the President and Deputy Counsel to the President; Kathleen M. H. Wallman to be Deputy Assistant to the President for Economic Policy and Chief of Staff and Counselor to the National Economic Council; and Elena Kagan to be Deputy Director of the Domestic Policy Council.

The President declared a major disaster in the State of Washington and ordered Federal aid to supplement State and local recovery efforts in the area struck by severe ice storms beginning November 19 and continuing through December 4.

The President declared a major disaster in Minnesota and ordered Federal aid to supplement State and local recovery efforts in the area struck by severe ice storms November 14-30.

January 8

In the morning, the President met with members of his economic team and Federal Reserve Board Chairman Alan Greenspan in the Oval Office to discuss economic issues.

January 9

In the morning, the President met with NATO Secretary General Javier Solana and Vice President Gore in the Vice President's West Wing office.

The President announced his intention to nominate Jeffrey Davidow to be a member of the Board of Directors of the Inter-American Foundation.

The White House announced that the President has appointed Secretary of the Interior Bruce Babbitt to lead a delegation representing the United States at the inauguration of President-elect Arnoldo Aleman of Nicaragua on January 10.

January 10

The President announced his intention to appoint Ann Lewis as Assistant to the President and Deputy Communications Director.

The President announced the nomination of Sheila F. Anthony as a Commissioner of the Federal Trade Commission.

LANGUAGE: ENGLISH

LOAD-DATE: February 11, 1997

M2 PRESSWIRE January 8, 1997

January 8, 1997

LENGTH: 734 words

HEADLINE: THE WHITE HOUSE
Statement by Press Secretary

BODY:

President Clinton today announced that Charles Ruff, currently Corporation Counsel to the District of Columbia, will succeed Jack Quinn as Assistant to the President and Counsel to the President. Mr. Quinn is expected to remain on the job until early next month.

The President made the following additional appointments: Cheryl D. Mills, currently an Associate Counsel to the President, as Deputy Assistant to the President and Deputy Counsel to the President;

Kathleen M.H. Wallman, currently Deputy Counsel to the President, to a newly created position as Deputy Assistant to the President for Economic Policy and Chief of Staff and Counselor to the National Economic Council, where she will manage the Council's staff and serve as deputy for policy-making on key legal and regulatory issues such as telecommunications;

Elena Kagan, currently an Associate Counsel to the President, as Deputy Director of the Domestic Policy Council.

Charles Ruff has served since 1995 as Corporation Counsel to the District of Columbia. He is a former United States Attorney for the District of Columbia, Associate Deputy and Acting Deputy Attorney General, and Special Prosecutor in the Watergate Special Prosecution Force. From 1982 to 1995, Ruff was a partner in the Washington law firm of Covington & Burling.

"The job of counsel to the President requires an individual with a rare combination of intelligence, judgment, knowledge, experience, stature, and legal skill," the President said. "That is a perfect description of Charles Ruff. I do not know anyone better suited for to fill this position and I have no doubt that, like his predecessor, Jack Quinn, he will do a superb job."

Cheryl Mills, who has served as an Associate Counsel to the President since 1993, served as Deputy General Counsel to the President-elect during the 1992 presidential transition and a staff attorney for the Presidential Transition Planning Foundation. Prior to joining the transition, she was an associate at the Washington, D.C. law firm of Hogan and Hartson. Ms. Mills received a B.A. in economics and philosophy from the University of Virginia and a J.D. from Stanford Law School.

Kathleen Wallman, who is currently Deputy Counsel to the President, served as Chief of the Common Carrier Bureau at the Federal Communications Commission and earlier as Deputy Chief of the FCC's Cable Service Bureau. Prior to joining the FCC, Ms. Wallman was a partner at the Washington, D.C. law firm of Armold and Porter. She received a B.A. from Catholic University and earned a J.D. from Georgetown University Law Center.

Elena Kagan, who currently serves as an Associate Counsel to the President, is on leave from the University of Chicago, where she is a Professor of Law,

specializing in constitutional law and labor law. Previously, Ms. Kagan was in private practice at the Washington, D.C. law firm of Williams and Connolly. She received her A.B. from Princeton University and an M. Phil in Politics at Worcester College, Oxford University, where she spent two years as a Daniel M. Sachs Scholar. She received her J.D. from Harvard Law School.

LANGUAGE: English

LOAD-DATE: May 23, 1997

LEVEL 1 - 143 OF 166 STORIES

United Press International

January 8, 1997, Wednesday, BC cycle

SECTION: Washington News

LENGTH: 260 words

HEADLINE: Ruff named White House counsel

DATELINE: WASHINGTON, Jan. 8

BODY:
President Clinton has tapped prominent Washington attorney and former Assistant Attorney General Charles Ruff to replace outgoing White House counsel Jack Quinn, who is leaving to return to private practice. Currently corporation counsel to the District of Columbia government, Ruff served as deputy attorney general in the Carter administration and was considered at one time for the job of attorney general in the Clinton administration. Ruff also served as a special prosecutor on the Watergate Special Prosecution Force, and was a partner in the Washington law firm of Covington and Burling from 1982 to 1995. In naming Ruff, Clinton said in a written statement Tuesday that he does not know ''anyone better suited to fill this position.'' Clinton also praised Quinn for doing ''a superb job'' in the White House counsel's position. Quinn, who has said he wants to spend more time with his family, will remain in the position until early February. Meanwhile, Clinton also has promoted Associate Counsel Cheryl Mills to the position of deputy counsel and assistant to the president. In other areas, Clinton has appointed Deputy Counsel Kathleen M.H. Wallman to serve in the newly created position of deputy assistant to the president for economic policy and chief of staff and counselor to the National Economic Counsel. Clinton also has tapped Associate Counsel Elena Kagan to serve as deputy director of the Domestic Policy Council. ---

LANGUAGE: ENGLISH

United Press International January 8, 1997, Wednesday, BC cycle

LOAD-DATE: January 9, 1997

LEVEL 1 - 144 OF 166 STORIES

January 8, 1997, Wednesday, Final Edition

SECTION: Part A; NATION; Pg. A4

LENGTH: 748 words

HEADLINE: Clinton chooses D.C.'s lawyer;
Ruff as general counsel to take on president's problems

BYLINE: Warren P. Strobel; THE WASHINGTON TIMES

BODY:

President Clinton announced yesterday that he has selected Charles F.C. Ruff, the District's chief lawyer, to serve as his new White House general counsel.

Mr. Ruff, a lawyer with a long history of public service and occasional brushes with controversy, takes on one of the most challenging positions in Washington.

He will be responsible for coordinating the White House response to an array of ethics probes by Congress, the Justice Department and independent counsel Kenneth W. Starr.

They include the Whitewater matter, the dispute over White House handling of confidential FBI files and the debate involving donations to the Democratic Party and Mr. Clinton's legal defense fund.

Mr. Ruff brings a wealth of experience to the task, including stints as a Watergate special prosecutor, U.S. attorney for the District and a series of high-profile clients while in private pratice.

In a telephone interview, he did not downplay the nature of the job.

Saying he was "honored that the president would ask me to help," he added: "Wholly apart from those [ethics] issues, the job is a daunting one . . . challenging and exciting - one that I'm sure will call on whatever skills I've got."

Some observers yesterday described Mr. Clinton's choice as a major loss for the District, which Mr. Ruff has served as corporation counsel since June 1995.

Earlier this week, after Mr. Ruff's name surfaced publicly, some administration officials questioned whether he was the right choice in view of

the flap four years ago over his failure to pay taxes on his domestic help. At the time, he was under consideration for nomination as deputy attorney general.

But one official yesterday praised the choice, noting that Mr. Ruff gave up a "humongous" salary at the law firm of Covington & Burling to take up the difficult job of corporation counsel at the request of Mayor Marion Barry. "That says it all," the official said.

"Mr. Ruff will be sorely missed by the Superior Court and the citizens othe District of Columbia," said D.C. Superior Court Acting Chief Judge Paul R. Webber III. "He has been a tremendous asset to the justice community, spearheading practical and innovative initatives addressing many of the most pressing social and legal issues facing the District."

Mr. Ruff replaces Jack Quinn, who informed the president shortly after the election that he wanted to leave for family and financial reasons. He will be the fifth White House counsel in Mr. Clinton's four years in office.

The decision means Mr. Clinton, under the guidance of incoming Chief of Staff Erskine Bowles, has reshuffled his Cabinet and named virtually all senior White House staff in time for Congress' return. The Senate opens hearings today on his nominee for secretary of state, Madeleine K. Albright.

In other moves yesterday, Mr. Clinton named Deputy White House Counsel Kathleen Wallman as chief of staff on the National Economic Council and appointed Cheryl Mills, an associate White House counsel, as new deputy in the legal shop. Elena Kagan, also an associate counsel, was named deputy to Bruce Reed, the head of the White House domestic policy council.

Mr. Ruff, 57, has been confined to a wheelchair since contracting a virus while teaching at the University of Liberia.

In private practice, he represented Sen. John Glenn, Ohio Democrat, in the "Keating Five" investigation; Sen. Charles S. Robb, Virginia Democrat, in a grand jury wiretapping probe; and Exxon Corp. in the government's criminal investigation of the Exxon Valdez oil spill.

Regarding the 1993 episode, Mr. Ruff admitted he did not pay the required Social Security levies. He was assessed $3,300 in back taxes and penalties. A similar situation was responsible in part for the withdrawal of Zoe Baird as Mr. Clinton's first choice as attorney general.

Some Republicans also were upset that Mr. Ruff arranged for law professor Anita Hill to take a polygraph test in an attempt to confirm sexual harassment allegations she made during confirmation hearings for Supreme Court Justice Clarence Thomas.

The test was conducted in Mr. Ruff's office. Sen. Joseph R. Biden Jr., the Judiciary Committee chairman at the time, refused to accept the test results because the committee could not vouch for the credentials of the examiner and because the panel had "nothing to do" with ordering the test.

* Jerry Seper and Jim Keary contributed to this report.

The Washington Times, January 8, 1997

LANGUAGE: ENGLISH

LOAD-DATE: January 8, 1997

LEVEL 1 - 145 OF 166 STORIES

U.S. Newswire

January 07, 1997 20:03 Eastern Time

SECTION: NATIONAL DESK

LENGTH: 1328 words

HEADLINE: White House Statement on Personnel Announcements

CONTACT: White House Press Office, 202-456-2100

DATELINE: WASHINGTON, Jan. 7

BODY:
The following was released today by the White House:

STATEMENT BY PRESS SECRETARY

President Clinton today announced that Charles Ruff, currently Corporation Counsel to the District of Columbia, will succeed Jack Quinn as Assistant to the President and Counsel to the President. Mr. Quinn is expected to remain on the job until early next month.

The president made the following additional appointments:

Cheryl D. Mills, currently an Associate Counsel to the President, as Deputy Assistant to the President and Deputy Counsel to the President;

Kathleen M.H. Wallman, currently Deputy Counsel to the President, to a newly created position as Deputy Assistant to the President for Economic Policy and Chief of Staff and Counselor to the National Economic Council, where she will manage the Council's staff and serve as deputy for policy-making on key legal and regulatory issues such as telecommunications;

Elena Kagan, currently an Associate Counsel to the President, as Deputy Director of the Domestic Policy Council.

Charles Ruff has served since 1995 as Corporation Counsel to the District of Columbia. He is a former United States Attorney for the District of Columbia, Associate Deputy and Acting Deputy Attorney General, and Special Prosecutor in the Watergate Special Prosecution Force. From 1982 to 1995, Ruff was a partner in the Washington law firm of Covington & Burling.

"The job of counsel to the President requires an individual with a rare combination of intelligence, judgment, knowledge, experience, stature, and legal skill," the President said. "That is a perfect description of Charles Ruff. I do not know anyone better suited for to fill this position and I have no doubt that, like his predecessor, Jack Quinn, he will do a superb job."

Cheryl Mills, who has served as an Associate Counsel to the President since 1993, served as Deputy General Counsel to the President-elect during the 1992 presidential transition and a staff attorney for the Presidential Transition Planning Foundation. Prior to joining the transition, she was an associate at the Washington, D. C. law firm of Hogan and Hartson. Ms. Mills received a B.A. in economics and philosophy from the University of Virginia and a J.D. from Stanford Law School.

Kathleen Wallman, who is currently Deputy Counsel to the President, served as Chief of the Common Carrier Bureau at the Federal Communications Commission and earlier as Deputy Chief of the FCC's Cable Service Bureau. Prior to joining the FCC, Ms. Wallman was a partner at the Washington, D.C. law firm of Armold and Porter. She received a B.A. from Catholic University and earned a J.D. from Georgetown University Law Center.

Elena Kagan, who currently serves as an Associate Counsel to the President, is on leave from the University of Chicago, where she is a Professor of Law, specializing in constitutional law and labor law. Previously, Ms. Kagan was in private practice at the Washington, D.C. law firm of Williams and Connolly. She received her A.B. from Princeton University and an M. Phil in Politics at Worcester College, Oxford University, where she spent two years as a Daniel M. Sachs Scholar. She received her J.D. from Harvard Law School.

LANGUAGE: ENGLISH

LOAD-DATE: January 7, 1997

LEVEL 1 - 146 OF 166 STORIES

The Associated Press

January 7, 1997, Tuesday, AM cycle

SECTION: Washington Dateline

LENGTH: 403 words

HEADLINE: Source: Clinton settles on new White House counsel

BYLINE: By RON FOURNIER, Associated Press Writer

DATELINE: WASHINGTON

BODY:
President Clinton named former Watergate prosecutor Charles F.C. Ruff on Tuesday to replace Jack Quinn as White House counsel, the administration's top legal troubleshooter.

Quinn surprised Clinton late last year by resigning, saying he needed to make more money for his family.

As the White House's lead attorney, Quinn coordinated the administration's response to Clinton's growing legal problems and oversaw the many legal issues that cross the president's desk. Ruff will be the fifth person to assume the job, one of the administration's toughest.

Ruff, a former partner at the Covington & Burling law firm, is the attorney for the District of Columbia. Known as a politically savvy lawyer, Ruff represented numerous political figures in his private practice, including Anita Hill, Sen. Charles Robb, D-Va., and former White House aide Ira Magaziner.

"I'm obviously honored the president has asked me to help," Ruff said.

As U.S. attorney in Washington from 1979 to 1982, Ruff supervised prosecutions of members of Congress involved in the "Abscam" bribery inquiry. He was the fourth and final Watergate prosecutor in 1975-77.

Ruff uses a wheelchair as a result of polio.

Early in the administration, Ruff was considered for several jobs, including deputy attorney general, but was ruled out for nonpayment of Social Security taxes on a semiretired household worker.

Ruff's job will be formidable: The Justice Department and Congress are investigating Clinton's fund-raising practices while Whitewater prosecutor Kenneth Starr continues his inquiry into possible criminal wrongdoing by White House officials.

Quinn's deputy, Kathy Wallman, was briefly considered as a replacement. Instead, she will be chief of staff for the National Economic Council, the White House also announced. Cheryl D. Mills, associate counsel, will be Ruff's deputy. Associate counsel Elena Kagan will be deputy director of the Domestic Policy Council.

Quinn's post was the biggest hole in Clinton's second-term White House staff. In other personnel matters, aides said:

-Former Michigan Gov. James Blanchard has emerged as a leading candidate to head the Democratic National Committee.

-Craig Smith, an Arkansas native who was political director of Clinton's re-election campaign, is the leading candidate to be the next White House political director. Former campaign spokeswoman Ann Lewis also is in the running.

LANGUAGE: ENGLISH

LOAD-DATE: January 7, 1997

LEVEL 1 - 147 OF 166 STORIES

Reuters North American Wire, January 7, 1997

January 7, 1997, Tuesday, BC cycle

LENGTH: 348 words

HEADLINE: Clinton names Charles Ruff top White House lawyer

DATELINE: WASHINGTON

BODY:
President Clinton on Tuesday named Washington lawyer Charles Ruff, a former Watergate special prosecutor, as his fifth White House counsel, the White House said in a statement.

Ruff replaces Jack Quinn, who last month announced he planned to resign from the grueling job as the top White House lawyer in order to spend more time with his family.

The White House counsel is responsible for a vast range of subjects, ranging from hammering out the president's positions on constitutional issues to ensuring that the White House is run in a lawful manner.

Since 1995 Ruff has been the corporation counsel for the District of Columbia, essentially acting as the top lawyer for the city of Washington, D.C.

Ruff has long experience in Washington, both in government as a top Justice Department official under former President Jimmy Carter and in the private sector as a partner in the law firm of Covington and Burling from 1982 to 1995.

Ruff, a polio victim who is wheelchair-bound, has also been a federal prosecutor, serving from 1979 to 1982 as United States Attorney for the District of Columbia.

Ruff, who was a candidate for deputy Attorney General when Clinton came to office in 1993, becomes Clinton's fifth White House counsel, following Bernard Nussbaum, Lloyd Cutler, Abner Mikva and Quinn.

Nussbaum resigned under pressure amid charges he had fumbled the handling of such controversial matters as the 1993 firing of seven White House travel office workers and deputy White House counsel Vince Foster's suicide later that year.

Cutler replaced Nussbaum on an interim basis and Mikva stepped down from the demanding White House counsel's job primarily because of age.

The White House also announced several other personnel changes Tuesday, naming deputy White House counsel Kathleen Wallman as chief of staff on the National Economic Council.

Cheryl Mills, currently an associate White House counsel, was elevated to deputy counsel, while Elena Kagan, also an associate counsel, was named deputy to Bruce Reed, the head of the White House domestic policy council.

LANGUAGE: ENGLISH

LOAD-DATE: January 08, 1997

LEVEL 1 - 148 OF 166 STORIES

United Press International

January 7, 1997, Tuesday, BC cycle

SECTION: Washington News

LENGTH: 262 words

HEADLINE: Ruff named White House counsel

DATELINE: WASHINGTON, Jan. 7

BODY:
President Clinton has tapped (Tuesday) prominent Washington attorney and former Assistant Attorney General Charles Ruff to replace outgoing White House counsel Jack Quinn, who is leaving to return to private practice. Currently corporation counsel to the District of Columbia government, Ruff served as deputy attorney general in the Carter administration and was considered at one time for the job of attorney general in the Clinton administration. Ruff also served as a special prosecutor on the Watergate Special Prosecution Force, and was a partner in the Washington law firm of Covington and Burling from 1982 to 1995. In naming Ruff, Clinton said in a written statement Tuesday that he does not know ''anyone better suited to fill this position.'' Clinton also praised Quinn for doing ''a superb job'' in the White House counsel's position. Quinn, who has said he wants to spend more time with his family, will remain in the position until early February. Meanwhile, Clinton also has promoted Associate Counsel Cheryl Mills to the position of deputy counsel and assistant to the president. In other areas, Clinton has appointed Deputy Counsel Kathleen M.H. Wallman to serve in the newly created position of deputy assistant to the president for economic policy and chief of staff and counselor to the National Economic Counsel. Clinton also has tapped Associate Counsel Elena Kagan to serve as deputy director of the Domestic Policy Council. ---

LANGUAGE: ENGLISH

LOAD-DATE: January 8, 1997

LEVEL 1 - 149 OF 166 STORIES

The Bulletin's Frontrunner

January 6, 1997, Monday

SECTION: WASHINGTON NEWS

LENGTH: 160 words

HEADLINE: Ruff Considered For Quinn's White House Post.

The Bulletin's Frontrunner January 6, 1997, Monday

BODY:
The W. Post (1/6, A15, Kamen) reported the White House faces a challenge in replacing White House Counsel Jack Quinn. The problem, "as one senior Administration official put it, is 'finding someone who's smart enough to do it and yet dumb enough to take it.' The most prominently mentioned name for the job is former US Attorney Charles F.C. Ruff." The Post said Ruff has "been a partner at Covington & Burling, so he presumably would have enough savings to cover his legal fees." Other moves in the counsel's office include a decision by associate counsel Elena Kagan, a tenured constitutional law professor on leave from the University of Chicago, to stay. Kagan was ready to return to Chicago, but new domestic policy chief Bruce Reed persuaded her to stay as his top deputy. Another associate counsel, David B. Fein, however, has departed for private practice in Connecticut.

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LEVEL 1 - 150 OF 166 STORIES

The Washington Post

January 06, 1997, Monday, Final Edition

SECTION: A SECTION; Pg. A15; IN THE LOOP; THE FEDERAL PAGE

LENGTH: 955 words

HEADLINE: Looks Unlike America

BYLINE: Al Kamen, Washington Post Staff Writer

BODY:
Even some of the Clinton administration diversity police were embarrassed by President Clinton's strong-arming Transportation Secretary Federico Pen a into accepting a nomination to be energy secretary -- a job for which he is notably lacking in credentials.

But the ethno-gender contortions were deemed, in the best inside-the-Beltway political wisdom, essential to pay off the Hispanic vote with two Cabinet seats.

Yet, after so much effort expended on Cabinet diversity, the Clinton White House itself remains a comfortable, mostly white boys club, with hardly an African American, Latino or Asian American in any senior job.

With the anticipated departure of public liaison office director Alexis M. Herman, the only minority in the top 25 or so senior staff members is first lady Hillary Rodham Clinton's chief of staff, Margaret A. Williams -- and she may leave soon.

New Chief of Staff Erskine B. Bowles has three openings -- and may have more -- at that assistant to the president level: a political affairs director to replace Douglas Sosnik, who moved up to be "counselor"; a replacement for Herman; and one for outgoing White House counsel Jack Quinn.

Administration officials say to keep an eye on former representative Alan Wheat (D-Mo.) and the Labor Department's wage and hour division chief Maria Echaveste, both mentioned for Cabinet jobs.

But "Look Like America"? Not the senior staff.

In Like Quinn?

Speaking of Quinn, the search goes on for a replacement, and the list doesn't appear too long. The problem, as one senior administration official put it, is "finding someone who's smart enough to do it and yet dumb enough to take it."

The most prominently mentioned name for the job is former U.S. attorney Charles F.C. Ruff, who had been under consideration for the attorney generalship after Zoe E. Baird went down in flames until it was discovered he had a nanny problem himself. Ruff is public-service minded, so he might be persuaded. And he's been a partner at Covington & Burling, so he presumably would have enough savings to cover his legal fees.

Career Counselor

Job alert. There are lots of openings in the counsel's office.

Associate White House counsel Elena Kagan, a tenured constitutional law professor on leave from the University of Chicago, had two going-away parties, the movers ready to go and a class waiting for her today. But the students will have to wait. New domestic policy chief Bruce Reed persuaded her to stick around and be his top deputy.

Another associate counsel, David B. Fein, however, stuck with his original plan and has gone to private practice in Connecticut. Even before Quinn threw in the towel, he was looking for staff. Shortly after the election, Quinn asked U.S. Attorney Eric H. Holder Jr. to "make referrals and recommendations to him about individuals who might be interested in moving to the White House Counsel's Office in the new administration," according to a memo Holder sent his assistants.

"So that I can be responsive to Quinn," Holder said, "I would like to gather the names of those interested in this opportunity and will then personally forward them to Quinn. . . . (And don't worry, I won't hold it against you for expressing interest in this opportunity -- I think it's a great one!)"

Wonder what he thinks would be a bad opportunity?

Dinner Duty

Browsing on the General Accounting Office World Wide Web page (we obviously need to get out more), we came across the Ebenezer Scrooge Memorial Memo of 1996. The Dec. 30 GAO decision memo involves a CIA request to reimburse members of the director's security detail for meals they were obliged to buy on duty.

The Washington Post, January 06, 1997

"According to the CIA," the memo says, the security folks traveling with the director or deputy are to "remain in the line of sight of the official they are protecting. On occasion [they] must accompany one of the officials" to area restaurants and sit at nearby tables so as to be unobtrusive but in the line of sight. "Some restaurants require that members of the detail order meals while sitting at these tables. The cost of these meals, often substantial, has been borne by the individual members of the detail," the memo said, adding that the agency thinks it, not the overworked security people, should pick up the tab.

Tough luck, the GAO said. The law says no government employee can get a free meal while at "a normal duty station," except for "extreme emergency situations," and this isn't one of them. Congress can and has overridden the restriction for some agencies, but not for the CIA. So until Congress acts, the security detail pays.

Starring Roles

John D. Bates, deputy independent counsel in charge of the Washington operation for Kenneth W. Starr, is resuming his responsibilities at the end of this month as head of the civil division in the U.S. Attorney's Office here. Bates had been on a six-month leave that somehow stretched two years. But he'll continue to oversee some matters at Starr's shop for some time. Assistant U.S. Attorney Eric A. Dubelier, who had been working on White House travel office matters for Starr, also has returned to run the terrorism section of the criminal division, while continuing to do some work in the counsel operation. Should we read something into this? Probably not.

Life After Legislature

Retiring Sen. Sam Nunn (D-Ga.), who chaired the Armed Services Committee back when Democrats were in the majority, has signed on as a partner in King & Spaulding's Atlanta office, with a second office here.

Outgoing Rep. Robert S. Walker (R-Pa.), who chaired the Science Committee and the House Republican Leadership, is off to be president of the Wexler Group.

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LEVEL 1 - 151 OF 166 STORIES

Yale Law Journal

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HEADLINE: Subsidized speech

BYLINE: Post, Robert C

BODY:

In 1931, at the very dawn of First Amendment jurisprudence, Chief Justice Hughes presciently observed that "(t)he maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people" was "a fundamental principle of our constitutional system."1 Since that time, the First Amendment has been interpreted by courts primarily as a guarantor of the ongoing legitimacy of democratic self-governance in the United States. As Justice Cardozo remarked in 1937, freedom of expression is "the matrix, the indispensable condition, of nearly every other form of freedom."2

To view the First Amendment "as the guardian of our democracy,"3 however, is to adopt a particular image of the American polity. It is to imagine that democratic legitimacy flows from the accountability of the state to the public opinion of its population. From its inception, therefore, First Amendment doctrine has primarily sought to protect from government regulation an independent realm of speech within which public opinion is understood to be forged.

The consequence of this orientation is that traditional First Amendment doctrine has had rather little to say about the speech of the government itself.4 In this Essay, I shall explore the corner of this perplexing territory in which are located the difficult constitutional questions raised by government subsidies for speech. Subsidized speech challenges two fundamental assumptions of ordinary First Amendment doctrine. It renders uncertain the status of speakers, forcing us to determine whether speakers should be characterized as independent participants in the formation of public opinion or instead as instrumentalities of the government. And it renders uncertain the status of government action, forcing us to determine whether subsidies should be characterized as government regulations imposed on persons or instead as a form of government participation in the marketplace of ideas.

These two questions of social characterization underlie all constitutional cases of subsidized speech.5 Like many First Amendment issues, they demand complex and contextual normative judgments about the boundaries of distinct constitutional domains in social space.6 Yet they have never been explicitly addressed by the Court, which has instead chosen to address cases of subsidized speech primarily by relying upon two doctrines, which respectively prohibit unconstitutional conditions and viewpoint discrimination.

Both of these doctrines ignore the questions of social characterization that actually impel First Amendment analysis, and as a consequence, each doctrine has grown increasingly detached from the real sources of constitutional decisionmaking. The doctrines have become formalistic labels for conclusions, rather than useful tools for understanding. It is no wonder that the haphazard inconsistency of the Court's decisions dealing with subsidized speech has long been notorious; the precedents have rightly been deemed "confused" and "incoherent, a medley of misplaced epigrams."7

My thesis in this Essay is that cases of subsidized speech can be usefully analyzed only if we fashion a doctrine that explicitly addresses relevant processes of social characterization. I hope to establish this thesis by demonstrating its value in the comprehension of particular cases. In Part I of this Essay, therefore, I examine FCC v. League of Women Voters8 to explore the

consequences of characterizing government action as a regulation of speech located in the democratic social domain called "public discourse."9 In Part II of this Essay I scrutinize the cases of Rosenberger v. Rector and Visitors of the University of Virginia10 and Rust v. Sullivan11 to probe the implications of characterizing government action as a regulation of speech located in a different kind of social formation, which may be termed the "managerial domain."12 In Part III of this Essay I discuss the recent controversy over funding restrictions imposed by statute upon the National Endowment for the Arts to assess the implications of characterizing government action as a regulation of public discourse or instead as a form of state participation in the marketplace of ideas.

SUBSIDIZED SPEECH AND PUBLIC DISCOURSE

A democratic government derives its legitimacy from the fact that it is considered responsive to its citizens. This form of legitimacy presupposes that citizens are, in the relevant sense, independent of their government. We would rightly regard a government that treated its citizens as mere instrumentalities of the state-"closed-circuit recipients of only that which the state chooses to communicate,"13-as totalitarian rather than democratic. One important function of the public/private distinction within American constitutional law is to mark this normative distinction between the independent citizen, who is deemed "private," and the state functionary, who is deemed "public."14

What it means in constitutional thought for a democratic government to be "responsive" to its citizens is a complex subject. To summarize arguments I have made elsewhere,15 First Amendment doctrine envisions a distinct realm of citizen speech, called "public discourse,"16 in which occurs a perpetual and unruly process of reconciling the demands of individual and collective autonomy. First Amendment jurisprudence conceptualizes public discourse as a site for the forging of an independent public opinion to which democratic legitimacy demands that the state remain perennially responsive. That is why the First Amendment jealously safeguards public discourse from state censorship.

Because First Amendment restraints on government regulation of public discourse are meant to embody the value of democratic self-governance, they contain within them many powerful and controversial presuppositions. They assume, for example, the existence of a domain of democratic selfdetermination, in which persons are independent and autonomous.17 Within the democratic domain of public discourse, persons must be given the freedom to determine their own collective identity and ends.18 Outside of public discourse, however, where the value of democratic self-governance is not preeminent, First Amendment doctrine will reflect other constitutional values, and it will presuppose a quite different notion of the legal subject.19 The nature of First Amendment analysis, therefore, will depend on whether or not speech is conceptualized as within the democratic domain of public discourse.20

This is of particular importance in cases of subsidized speech. When the state supports speech, it establishes a relationship between itself and private speakers that can sometimes compromise the independence of the latter. Subsidization may thus transport speech from public discourse into other constitutional domains. But because there are many examples of subsidized speech that are unproblematically characterized as within public discourse, the mere fact of subsidization is not sufficient to remove speech from public discourse. Subsidization is only one factor that must be considered when making judgments

about the characterization of speech.21 In this Part of the Essay I explore the nature of these judgments, examining the process and consequences of classifying subsidized speech as within or outside of public discourse.

A. Unconstitutional Conditions, Subsidized Speech, and Public Discourse That subsidization simpliciter is not determinative of the classification of speech, and that such classification has fundamental and far-reaching consequences for First Amendment analysis, was recently recognized by the Court in its opinion in Rosenberger v. Rector and Visitors of the University of Virginia,22 which struck down a state university's policy of excluding religious expression from its subsidies of student speech. The Court observed: (W)hen the State is the speaker, it may make content-based choices. When the University determines the content of the education it provides, it is the University speaking, and we have permitted the government to regulate the content of what is or is not expressed when it is the speaker or when it enlists private entities to convey its own message.... (W)hen the government appropriates public funds to promote a particular policy of its own it is entitled to say what it wishes. When the government disburses public funds to private entities to convey a governmental message, it may take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted by the grantee.

It does not follow, however, . . . that viewpoint-based restrictions are proper when the University does not itself speak or subsidize transmittal of a message it favors but instead expends funds to encourage a diversity of views from private speakers. A holding that the University may not discriminate based on the viewpoint of private persons whose speech it facilitates does not restrict the University's own speech, which is controlled by different principles.... The distinction between the University's own favored message and the private speech of students is evident in the case before US.23

The Court's point is that when the state itself speaks, it may adopt a determinate content and viewpoint, even "when it enlists private entities to convey its own message."24 But when the state attempts to restrict the independent contributions of citizens to public discourse, even if those contributions are subsidized, First Amendment rules prohibiting content and viewpoint discrimination will apply. The reasoning of Rosenberger thus rests on two premises. First, speech may be subsidized and yet remain within public discourse; the mere fact of subsidization is not sufficient to justify classifying speech as within or outside public discourse. Second, substantive First Amendment analysis will depend on whether the citizen who speaks is characterized as a public functionary or as an independent participant in public discourse.

This second premise may seem obvious, but it has important implications for the doctrine of unconstitutional conditions. That doctrine, as characterized by one eminent commentator, "holds that government may not grant a benefit on the condition that the beneficiary surrender a constitutional right, even if the government may withhold that benefit altogether."25 Thus in Perry v. Sindermann26 the Court held that a state college system could not fire a teacher due to his public criticisms of the system, because "even though a person has no 'right' to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, ... (i)t may not deny a benefit to a person on a basis that infringes his constitutionally protected interests-especially, his interest in freedom of speech."27 Of course this formulation is essentially circular, because it does not specify the nature of

the First Amendment rights to be protected, and in particular, it fails to specify whether the parameters of those rights are contingent upon the granting of the benefit.28 The most common way of interpreting the unconstitutional conditions doctrine, therefore, is to hold that it prohibits the government from doing "indirectly what it may not do directly,"29 so that First Amendment rights are defined independently of the provision of the benefit.

In cases of subsidized speech, however, the provision of a benefit can sometimes convert a citizen into a public functionary and thereby alter the nature of the relevant First Amendment rights and analysis. The abstract principles underlying the unconstitutional conditions doctrine simply do not address this possibility. Sophisticated efforts to repair the doctrine by incorporating pertinent but generic criteria like "baselines"30 or "systemic effects"31 also fail to account for the fact that the categorization of the status of a speaker will ordinarily be a very specific, context-bound judgment, informed by the particular First Amendment considerations relevant to determining the boundaries of public discourse.

With regard to questions of subsidized speech, therefore, the doctrine of unconstitutional conditions, as Cass Sunstein has noted, is "too crude and too general to provide help in dealing with contested cases."32 The doctrine serves primarily to remind us that First Amendment analysis does not end merely because the government has chosen to act through the provision of a subsidy. The doctrine recalls the truth of the first premise that we observed in the passage from Rosenberger: Speech may be subsidized and yet nevertheless remain within public discourse, so that even though the state may retain the "greater" power to terminate the subsidy (and perhaps also the speech), it does not follow that it also retains the "lesser" power to control the speech in ways that are otherwise inconsistent with First Amendment restraints on government regulations of public discourse.

The public forum cases provide the most obvious illustration of how persons can receive government benefits and nevertheless remain within public discourse. These cases hold that speech occurring on certain kinds of government property, like streets and parks, will be "subject to the highest scrutiny."33 Chief Justice Rehnquist has acknowledged that "this Court has recognized that the existence of a Government 'subsidy,' in the form of Government-owned property, does not justify the restriction of speech in areas that have 'been traditionally open to the public for expressive activity,' or have been 'expressly dedicated to speech activity.'"34 Publications that receive the "subsidy" extended by the United States to second-class mail provide another example of subsidized speech that receives significant First Amendment protection.35 Receipt of the subsidy does not remove such publications from the safeguards otherwise accorded public discourse.36

These examples demonstrate that the presence or absence of a subsidy is not determinative of whether speech will be classified as within or outside the domain of public discourse. Subsidized speech that is classified as public discourse will receive similar kinds of First Amendment protections as are extended to public discourse generally. It follows from this that (then) Justice Rehnquist could not have been correct when he observed in Regan v. Taxation with Representation that "a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right."37 Rehnquist's observation rests on the fallacy that subsidization is always sufficient to determine the status of speech, whereas there are circumstances in which subsidized speech will be

classified as within public discourse and in which the selective withdrawal of subsidies will be deemed an improper regulation of that discourse. Consider, for example, the fatal constitutional difficulties that would arise if a state were to exclude speech about nuclear power or abortion from a public forum, or if Congress were to withhold second-class mailing subsidies from magazines that discuss these issues.38

If subsidized speech can sometimes be classified as public discourse, it can also, as Rosenberger recognizes, be deemed equivalent to the speech of the state itself. Such speech will not be conceptualized as requiring protection from the government, but will instead be regarded as state action, and hence subject to the same array of constitutional restraints and prerogatives that we accord to the government.39 Some have claimed that the mere fact of a state subsidy is sufficient to justify classifying speech as state action. For example, a government official recently testified that "when the government funds a certain view, the government itself is speaking. It therefore may constitutionally determine what is to be said."40 We know from the public forum and U.S. mail cases, however, that this assertion is false. Government funding is not by itself sufficient to establish state action in other contexts,41 and there is no reason why we should reach a different conclusion within the context of subsidized speech.

B. FCC v. League of Women Voters: Subsidized Speech and the Constitutional Characterization of Speakers

One of the striking peculiarities of First Amendment jurisprudence is that speakers can be assigned intermediate positions between private participants in public discourse and state actors. The clearest and most illuminating example of the Court's creation of such an intermediate status may be found in the context of the broadcast media. In 1969, in Red Lion Broadcasting Co. v. FCC,42 the Court upheld FCC regulations that would have been plainly unconstitutional if applied to participants in public discourse.43 At issue in Red Lion was the fairness doctrine, which required broadcasters to give adequate coverage to opposing views of public issues, as well as subsidiary FCC rules requiring that those personally attacked be given a right to reply. The Court began its reasoning with the premise that broadcast frequencies were scarce: "Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish."44 The Court thereupon characterized broadcast licenses as conferring a "temporary privilege"45 to use designated frequencies on the condition that a licensee "conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves."46

Red Lion thus conceptualized broadcasters as public trustees,47 rather than as independent and private participants in public discourse. As a consequence, the Court interpreted the First Amendment as protecting not the broadcasters' independent contributions to public discourse, but instead the speech facilitated by broadcasters. The Court carefully refrained from attributing First Amendment rights to broadcasters: "(T)he people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of viewers and listeners, not the right of the broadcasters, which

is paramount."48

Four years later, however, members of the Court began to have second thoughts. Four Justices in CBS, Inc. v. Democratic National Committee49 held, in a complex and fractured decision, that although broadcasters were "public trustees," their speech was not that of the government itself, and hence that the behavior of broadcasters did not constitute state action for purposes of triggering constitutional requirements.50 These Justices were concerned to craft an intermediate position for broadcasters, one that envisioned an "essentially private broadcast journalism held only broadly accountable to public interest standards."51

This compromise was ratified by the full Court in 1981, when it declared that "the broadcasting industry is entitled under the First Amendment to exercise 'the widest journalistic freedom consistent with its public (duties)."'52 In stark contrast to Red Lion, the Court went out of its way to refer to the need to "properly balance() the First Amendment rights of . . . the public . . . and broadcasters."53 It thus signified that while broadcasters would be seen in some respects as public fiduciaries, without independent First Amendment rights, they would be regarded in other respects as participants in public discourse, with attendant constitutional protections. This resolution seems plainly necessary to explain why the Court has persistently attributed the full spectrum of First Amendment rights and protections to broadcast journalists when they are sued for defamation and invasion of privacy.54

I mention this compromise because it provides the necessary background for grasping an extraordinarily complex and fascinating case involving subsidized speech, FCC v. League of Women Voters.55 The case involved the constitutionality of section 399 of the Public Broadcasting Act, which prohibited "editorializing" by any "noncommercial educational broadcasting station" receiving grants from the Corporation for Public Broadcasting (CPB), "a nonprofit corporation authorized to disburse federal funds to noncommercial television and radio stations."56 Section 399 was justified on the ground that public deliberation could be distorted by potential government pressure on the editorial policies of government-supported broadcast stations.

Because this justification turned on an empirically based theory of potential danger to the structure of public deliberation, one might have expected the Court, as Justice Stevens urged in dissent, to "respect" the "judgment" of Congress.57 But Justice Brennan, writing for the Court, introduced a new variable into the equation:

(W)e have . . . made clear that broadcasters are engaged in a vital and independent form of communicative activity. As a result, the First Amendment must inform and give shape to the manner in which Congress exercises its regulatory power in this area. Unlike common carriers, broadcasters are "entitled under the First Amendment to exercise 'the widest journalistic freedom consistent with their public (duties).'"58

By specifically invoking the First Amendment rights of broadcasters, Brennan signalled that broadcasters could be conceptualized as independent contributors to public discourse and accordingly could be protected by independent judicial review.

If broadcasters were to be regarded as public trustees without independent First Amendment rights in some circumstances, and as constitutionally protected private participants in public discourse in other circumstances, how ought they be classified with respect to a prohibition on their ability to editorialize? Brennan's response was clear and unequivocal: "(T)he special place of the editorial in our First Amendment jurisprudence simply reflects the fact that the press, of which the broadcasting industry is indisputably a part, carries out a historic, dual responsibility in our society of reporting information and of bringing critical judgment to bear on public affairs."59

Broadcast editorials, like those of the press generally, were thus categorized constitutionally as "part and parcel of 'a profound national commitment . . . that debate on public issues should be uninhibited, robust, and wide-open.'"60 Broadcasters, when disseminating editorials, were to be classified as independent contributors to public discourse; like the press generally, they were to be regarded as possessing the self-determining agency of private citizens.

Noncommercial educational stations, however, are not equivalent to private broadcasters; they are supported in part by federal financial assistance channelled through CPB. It was therefore possible to argue that noncommercial educational stations were public functionaries, even if broadcasters generally could not be so characterized. Indeed, in CBS, Inc. v. Democratic National Committee, nearly a decade before, Justice Douglas had made exactly this point.61 He contrasted the independent status of commercial broadcasters to CPB's noncommercial grantees, whom he regarded as owned and managed by a federal agency and hence as instrumentalities of the state constrained by the First Amendment to act as common carriers.62

Justice Brennan rejected this characterization of noncommercial stations. He pointed to "the elaborate structure established by the Public Broadcasting Act"63 that was specifically designed to "protect the stations from governmental coercion and interference."64 Brennan concluded that the structure of the Act "ensured . . . that these stations would be as insulated from federal interference as the wholly private stations."65 The status of the noncommercial stations would thus be classified as equivalent to that of broadcasters generally.

Notice, then, that before the opinion in League of Women Voters can even begin to engage in what would ordinarily be regarded as First Amendment analysis, it must accomplish at least three predicate acts of characterization: with regard to broadcasters; with regard to broadcasters' editorials; and with regard to noncommercial broadcasters' editorials. Each time, the opinion opts for characterizing section 399 as a government regulation of public discourse.66 These characterizations enable Brennan to use a familiar arsenal of First Amendment doctrines to decide the case. Brennan attacks section 399 for its "substantial interference with broadcasters' speech,"67 for its contentbased discrimination,68 for its vagueness,69 for its "patent overinclusiveness and underinclusiveness,"70 for the weakness of its justifications,71 and for its failure to accomplish its ends by using "less restrictive means that are readily available."72 All of these doctrinal methods are appropriately applied to regulations of public discourse; none was used in Red Lion because in that case broadcasters were broadly conceived of as public functionaries.

The specific question of subsidized speech is relevant to only one of the three predicate acts of characterization that make the decision in League of Women Voters possible. The case illustrates that although the fact of government support is relevant to classifying a speaker as within or outside public discourse, it is not determinative. The subsidy question differs in neither form nor function from the other issues of characterization posed by the case. Subsidization is merely one of many possible connections between a speaker and the state. All of these connections, including subsidization, must be assessed to determine whether particular speakers in particular circumstances ought constitutionally to be regarded as independent participants in the processes of democratic self-governance, and hence whether their speech ought to receive the First Amendment protections extended to public discourse.

Once subsidized editorials are mapped onto the domain of public discourse, and once section 399's prohibition is characterized as a restriction of that discourse, Justice Rehnquist's dissent, which focuses only on the specific issue of subsidy, is radically undermined. Rehnquist argued that section 399 should be understood as a simple congressional decision "that public funds shall not be used to subsidize noncommercial, educational broadcasting stations which engage in 'editorializing.'"73 Reiterating the theme of his opinion in Regan v. Taxation with Representation,74 Rehnquist rejected "the notion that, because Congress chooses to subsidize some speech but not other speech, its exercise of its spending powers is subject to strict judicial scrutiny."75 But, as we have seen, selective congressional subsidies of magazines in second-class mail would indeed be subject to strict judicial scrutiny.76 This indicates that the thrust of Rehnquist's dissent is quite beside the point once the government regulation at issue is characterized as a restriction on public discourse.

The criteria for establishing whether speech ought to be characterized as public discourse are complex, contextual, and obscure,77 and particularly so in cases of subsidized speech. I am confident that there can be no simple empirical or descriptive line of demarcation.78 Ultimately, speech will be assigned to public discourse on the basis of normative and ascriptive judgments as to whether particular speakers in particular contexts should constitutionally be regarded as autonomous participants in the ongoing process of democratic self-governance.79 Whether explicitly addressed or not, such judgments are essential predicates to all cases of subsidized speech.

II. SUBSIDIZED SPEECH AND MANAGERIAL DOMAINS

Public discourse must be distinguished from domains that I have elsewhere called "managerial."80 Within managerial domains, the state organizes its resources so as to achieve specified ends. The constitutional value of managerial domains is that of instrumental rationality, a value that conceptualizes persons as means to an end rather than as autonomous agents. Within managerial domains, therefore, ends may be imposed upon persons.81 Managerial domains are necessary so that a democratic state can actually achieve objectives that have been democratically agreed upon. Yet managerial domains are organized along lines that contradict the premises of democratic self-governance. For this reason, First Amendment doctrine within managerial domains differs fundamentally from First Amendment doctrine within public discourse. The state must be able to regulate speech within managerial domains so as to achieve explicit governmental objectives.82 Thus the state can regulate speech within public educational institutions so as to achieve the purposes of education;83 it can regulate speech within the judicial system so as to attain

the ends of justice;84 it can regulate speech within the military so as to preserve the national defense;85 it can regulate the speech of government employees so as to promote "'the efficiency of the public services (the government) performs through its employees"';86 and so forth.87

As a result of this instrumental orientation, viewpoint discrimination occurs frequently within managerial domains. To give but a few obvious examples: the president may fire cabinet officials who publicly challenge rather than support administration policies; the military may discipline officers who publicly attack rather than uphold the principle of civilian control over the armed forces; public defenders who prosecute instead of defend their clients may be sanctioned; prison guards who encourage instead of condemn drug use may be chastised. Viewpoint discrimination occurs within managerial domains whenever the attainment of legitimate managerial objectives requires it.88

I stress this point because if there is one constitutional principle that the Court has continuously reiterated as restraining the regulation of subsidized speech, it is that such regulation cannot discriminate on the basis of viewpoint.89 Yet it is quite common for subsidized speech to be located within managerial domains. The general principle forbidding viewpoint discrimination must therefore be false with respect to such subsidized speech. A. Viewpoint Discrimination, Subsidized Speech, and Managerial Domains The Court's recent opinion in Rosenberger v. Rector and Visitors of the University of Virginia90 amply displays the confusion caused by the Court's announced prohibition on viewpoint discrimination. In an opinion by Justice Kennedy, the Court held that "the requirement of viewpoint neutrality in the Government's provision of financial benefits"91 rendered unconstitutional the University of Virginia's refusal to extend subsidies to student speech promoting religious views. But the Court had already held in other contexts that "(a) university's mission is education" and hence that a public university is endowed with the "authority to impose reasonable regulations compatible with that mission upon the use of its campus and facilities."92 A public university is therefore a managerial domain dedicated to the achievement of education, and, as one might expect, public universities routinely regulate the speech of faculty and students in ways required by that mission. Justice Kennedy, realizing this, used the language of public forum doctrine, the only doctrinal category currently possessed by the Court capable of exnressing the reauirements of managerial domains. to observe that a school can create a "limited public forum" by reserving its resources "for certain groups or for the discussion of certain topics."93 In this way Justice Kennedy authorized the University of Virginia to distinguish between speakers and speech as necessary to serve its mission. He thus authorized such commonsense and necessary practices as chemistry departments' restricting their grants to students studying chemistry, or English departments' restricting their grants to students studying English. But, Justice Kennedy insisted, "we have observed a distinction between, on the one hand, content discrimination, which may be permissible if it preserves the purposes of that limited forum, and, on the other hand, viewpoint discrimination, which is presumed impermissible when directed against speech otherwise within the forum's limitations."94

This distinction between content and viewpoint discrimination is simply untenable within the context of a managerial domain. In ordinary language, we would say that a content-based regulation is one that is keyed to the meaning of speech, whereas a viewpoint-based regulation is one that intervenes into a specific controversy in order to advantage or disadvantage a particular perspective or position within that controversy.95 Justice Kennedy clearly

adopts this sense of the distinction in Rosenberger, for he notes that "discrimination against one set of views or ideas is but a subset or particular instance of the more general phenomenon of content discrimination," and that in the particular case before him "the University does not exclude religion as a subject matter but selects for disfavored treatment those student journalistic efforts with religious editorial viewpoints."96

If the distinction between viewpoint and content discrimination is understood in this way, however, it is irrelevant to the regulation of speech within managerial domains. In such settings, speech is necessarily and routinely constrained on the basis of both its content and its viewpoint. Academic evaluations of students and faculty are regularly based upon viewpoint. Historians who deny the Holocaust are not likely to receive appointments to reputable departments; students who deny the legitimacy of the taxing power of the federal government are not likely to receive high grades in law schools. The same principles apply to university decisions concerning the subsidization of speech. So, for example, no First Amendment issue would be raised if a graduate student who proposed to study the mythical combustive element phlogiston were to be refused a research grant by the chemistry department of a public university, however much the student were to complain about discrimination against her view of the causes of chemical reactions. The constitutionality of the refusal would instead turn on whether the chemistry department's criteria for awarding grants were related to its legitimate educational mission. That the department had both the purpose and effect of discriminating against the student's particular viewpoint would properly be deemed immaterial.

This argument suggests that the Court's effort to distinguish content from viewpoint discrimination is fundamentally confused, at least within managerial domains. I suspect that in fact the Court deploys the distinction to express a quite different point, which can perhaps be understood if one imagines a case in which a chemistry department awards research grants only to students who oppose abortion rights. Although we might be tempted to say about this case that the department's criteria for awarding grants are outrageously viewpoint discriminatory, what we would actually mean is that the criteria are completely irrelevant to any legitimate educational objective of the department.

We may hypothesize, then, that the Court's use of the viewpoint/content distinction, when applied within managerial domains, actually expresses the difference between those restraints on speech that are instrumentally necessary to the attainment of legitimate managerial purposes, and those that are not. If we interpret Rosenberger in this way, we can read the decision as implicitly resting upon the conclusion that the exclusion of speech promoting religious views is irrelevant to any legitimate educational purposes served by the university's grant program.9' To pursue this question, however, would lead to a full-scale analysis of constitutionally permissible and impermissible educational objectives, a path I do not propose now to pursue.98

B. Rust v. Sullivan: Subsidized Speech and the Boundaries of Managerial Domains

Instead I shall turn to the more fundamental issue of the principles that ought to inform First Amendment decisions to assign subsidized speech to managerial domains. These principles are of fundamental importance because First Amendment standards applicable to such domains differ so dramatically from those governing public discourse. I shall use as the focus of my inquiry the

"extraordinary-some would say shocking-decision"99 of Rust v. Sullivan. 100

Rust was certainly a controversial decision. It sparked hostile hearings in the United States Senate,101 fiercely negative public attention,102 and sharply critical academic commentary. 103 It involved a challenge to regulations issued in 1988 by the Department of Health and Human Services (HHS) to implement Title X of the Public Health Service Act. The Act authorized HHS to subsidize family planning clinics, but it stated that "'(n)one of the funds appropriated under this subchapter shall be used in programs where abortion is a method of family planning."104 The regulations prohibited Title X clinics and their employees from providing "'counseling concerning the use of abortion as a method of family planning or provid(ing) referral for abortion as a method of family planning."'105 They also prohibited Title X clinics and their employees "from engaging in activities that 'encourage, promote or advocate abortion as a method of family planning. "'106

The regulations were attacked under the unconstitutional conditions doctrine, because "they condition the receipt of a benefit, in these cases Title X funding, on the relinquishment of a constitutional right, the right to engage in abortion advocacy and counseling."107 But the Court, citing League of Women Voters and Regan, defended the regulations on the grounds that "our 'unconstitutional conditions' cases involve situations in which the Government has placed a condition on the recipient of the subsidy rather than on a particular program or service, thus effectively prohibiting the recipient from engaging in the protected conduct outside the scope of the federally funded proaram."108

The Court's response to the plaintiffs' unconstitutional conditions argument is unconvincing. It would be unconstitutional for the government to condition access to the "subsidy" of second-class mailing privileges on the waiver of all advocacy of abortion within the mailed matter, even if magazines were free to advocate abortion outside "the scope of' the United States mail. Whether restrictions on subsidies apply only to funded speech or generically to recipients of the subsidies is thus not constitutionally determinative.

The Court could, however, have offered a more convincing response to the unconstitutional conditions argument. In both League of Women Voters and the hypothetical case of withdrawing second-class mailing privileges, the speech at issue can be characterized as public discourse. But it is highly questionable whether the speech of the Title X clinics and their employees could also be classified as public discourse. It is in fact superficially plausible to locate that speech instead within a managerial domain established by Title X.

There is much evidence that the Court in Rust was actually driven by the perception that the speech restricted by the HHS regulations should be located in a managerial domain. The Court repeatedly asserted that "(t)he challenged regulations" do no more than "implement the statutory prohibition .... They are designed to ensure that the limits of the federal program are observed."109 The argument, if fully articulated, would be that Congress enacted Title X to accomplish certain purposes, that these purposes are legitimate, and that the HHS regulations function within this managerial domain to regulate speech so as to achieve these purposes. The doctrine of unconstitutional conditions is powerless against this argument, because the doctrine lacks any mechanism for determining the domain to which speech should be allocated and hence for adequately describing the nature of the "rights" that are to be protected. The

argument, however, is flatly incompatible with the Court's own precedents that viewpoint discrimination is always and everywhere unconstitutional. The HHS regulations were plainly guilty of "impermissibly discriminating based on viewpoint because they prohibit 'all discussion about abortion as a lawful option-including counseling, referral, and the provision of neutral and accurate information about ending a pregnancy-while compelling the clinic or counselor to provide information that promotes continuing a pregnancy to term."'110

Faced with this awkward inconsistency, the Court simply blinked. It rejected the plaintiffs' charge of viewpoint discrimination on the grounds that: This is not a case of the Government "suppressing a dangerous idea," but of a prohibition on a project grantee or its employees from engaging in activities outside of the project's scope. To hold that the Government unconstitutionally discriminates on the basis of viewpoint when it chooses to fund a program dedicated to advance certain permissible goals, because the program in advancing those goals necessarily discourages alternative goals, would render numerous Government programs constitutionally suspect.111 Nothing could more vividly illustrate the failure of the Court's purported prohibition on viewpoint discrimination than this passage. The HHS regulations plainly discriminate on the basis of viewpoint, if by viewpoint discrimination is meant, as Justice Kennedy meant in Rosenberger, to constrain speech on only one side of a disputed subject.112 By upholding the HHS regulations, therefore, the Court essentially confessed to the irrelevance of the criterion of viewpoint discrimination within the context of managerial regimes. It instead subtly but significantly shifted the meaning of viewpoint discrimination along the lines that I suggested in our discussion of Rosenberger.113 The Court in Rust in effect stated that regulations within managerial domains would not be deemed viewpoint discriminatory so long as they were necessary to accomplish legitimate managerial ends.

If the analysis I have so far offered is correct, therefore, Rust is an entirely defensible decision so long as it is assumed that the speech restricted by the HHS regulations is appropriately characterized as located within the boundaries of a managerial regime dedicated to the achievement of legitimate ends. But is this assumption well founded? Putting aside the question of whether the ends of the HHS regulations are legitimate,114 the question I wish to explore is whether the speech regulated in Rust ought in fact to be assigned to a managerial domain.

Ultimately the allocation of speech to managerial domains is a question of normative characterization. What is at stake is whether we wish to consign speech to a social space where "the attainment of institutional ends is taken as an unquestioned priority."115 This represents a serious contraction of our ordinary understanding of freedom of expression, and it therefore requires extraordinary justification. I have argued in detail elsewhere that such restrictions on speech can be justified only where those occupying the relevant social space actually inhabit roles that are defined by reference to an instrumental logic.116

So, for example, persons in a government bureaucracy assume various institutional roles-secretaries, clerks, case workers, supervisors-all defined by reference to the organizational rationality of the domain. Similarly, persons within universities act the part of students or professors or graduate teaching assistants, by which they reveal their acquiescence in the instrumental logic of education. By contrast, the history of public forum doctrine can be read to

illustrate how courts came to realize that the diversity of roles and expectations that persons actually bring to their use of government parks and streets precludes their subjection to state managerial authority. The same point can be made about the United States mail. Even though the Postal Service is clearly a government-owned and operated organization, persons have a "practical dependence . . upon the postoffice (sic),"117 so that they assimilate the mail to the rich and complex spectrum of roles and expectations that they inhabit in their everyday lives. Thus, while managerial authority over the Postal Service may be appropriate, that authority does not extend to members of the general public who use the mail, because, as Justice Holmes famously observed, "the use of the mails is almost as much a part of free speech as the right to use our tongues."118

We may ask, then, about the nature of the roles inhabited by persons regulated by the HHS regulations at issue in Rust. For the sake of simplicity, I shall examine only the core dyadic relationship of physician and patient that all sides take to be at the center of the case, and I will therefore consider the constitutionality of those aspects of the HHS regulations that prohibit physicians from offering advice or referrals about abortion in the course of their consultations with their patients, even when, in the medical judgment of the physician, it would be appropriate to do so.

Physicians are of course professionals, and it is well known that professionals do not fit well into the instrumental rationality of organizations.119 This is fundamentally because professionals must always qualify their loyalty and commitment to the vertical hierarchy of an organization by their horizontal commitment to general professional norms and standards.120 "(P)rofessionals participate in two systems-the profession and the organization-and their dual membership places important restrictions on the organization's attempt to deploy them in a rational manner with respect to its own goals."121

This point has been accepted by the Court in the context of lawyers. Thus, for example, the Court has held that although a public defender is employed by the state, the conduct of a public defender does not constitute state action because

a public defender is not amenable to administrative direction in the same sense as other employees of the State.... (A) defense lawyer is not, and by the nature of his function cannot be, the servant of an administrative superior. Held to the same standards of competence and integrity as a private lawyer . . a public defender works under canons of professional responsibility that mandate his exercise of independent judgment on behalf of the client. "A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services."122

Although the Court has found, in contrast, that the conduct of a prison physician does constitute state action, it has justified this holding on the explicit ground that a doctor's "professional and ethical obligation to make independent medical judgments (does) not set him in conflict with the State and other prison authorities."123 This obligation to make independent medical judgments124 sets limits to the managerial authority of a physician's employer, just as it does to the managerial authority of a lawyer's employer, because "(a) physician's professional ethics require that he have 'free and complete

exercise of his medical judgment and skill."'125 "If the employer were to control the independent judgment in the decisionmaking process and the performance of the professional's duties, the employer's control might conflict with the professional's primary and unequivocal duty to exercise his or her independent judgment."126

It is far from clear, then, that physicians, even if they have accepted employment in Title X clinics, occupy roles defined by reference to a purely organizational logic, particularly in situations where that logic seeks to override the necessary exercise of independent professional judgment. And this is of course precisely what the HHS regulations attempted to do.127

We would reach the same conclusion if the issue were analyzed from the perspective of the patient. The expectations of patients are symmetrical to those of physicians. In a world where physicians routinely exercise independent judgment, patients come to expect and rely upon that judgment. Those served by Title X clinics adopt the role of patients and hence signal their expectation that they will receive competent and responsible professional service. Except in the most unusual of circumstances, patients expect the independent judgment of their physicians to trump inconsistent managerial demands.

If this analysis is correct, the Court in Rust lacked justification for its implicit decision to allocate medical counselling to the managerial domain of the Title X clinic. Neither the role of physician nor that of patient warrant any inference of acceptance of such a purely instrumental orientation.128 For this reason, the viewpoint discrimination inherent in the HHS regulations cannot be justified by reference to managerial authority.

The matter is complicated, however, because the HHS regulations constrain private conversations between doctors and patients, and this speech is plainly not part of public discourse. It is therefore not self-evident that viewpoint discrimination is automatically forbidden. The matter can perhaps best be conceptualized as a regulation of professional speech. Sometimes such regulation is equivalent to the direction of professional practice. There is, for example, no constitutional difference between forbidding doctors from prescribing a certain drug and forbidding them from using it. In such a case, the First Amendment probably does not impose any distinctive constraints on the state's general power to regulate the practice of medicine. But the HHS regulations pose a different constitutional problem, for they are aimed specifically and explicitly at prohibiting the disclosure of information; they are not directed at medical practice.129 There was never any question or possibility that doctors at Title X clinics would actually perform abortions. What the HHS regulations seek to interdict is the provision of facts about the possibility or availability of abortion as a family planning option.

The First Amendment is surely implicated whenever the state seeks to proscribe the flow of information qua information.130 Although there is at present no well-developed doctrine setting forth the exact test to be used to evaluate viewpoint discriminatory regulations of this type in the context of professional speech,131 it would be fair to say that the First Amendment should at a minimum require that any such restriction have a substantial justification. The most obvious justification, and the only one actually articulated by the Court in Rust, is that the government wished to create family planning clinics that did not include abortion, and that the HHS regulations served this end.132 But if my argument is correct that physician-patient relationships in Title X

clinics are not subject to automatic managerial direction, this justification is constitutionally insufficient. The mere fact that the government has used subsidies to accomplish a purpose ought not to provide adequate constitutional grounds for the kind of restrictions at issue in Rust.

Viewpoint discriminatory regulations that prohibit the dissemination of information are ordinarily justified by a showing that the foreclosed information will lead to some harm that the government has a right to prevent. Thus if the government were to prohibit doctors subsidized by the Veterans Administration from discussing a certain drug, the constitutionality of the prohibition would normally turn on some showing that the drug was harmful and that the provision of information would increase the likelihood of harm. But this whole class of justifications seems unavailable to the government in Rust, because they would require that the government characterize abortion as a positive harm. The right to choose abortion is constitutionally protected, however, on the grounds that its exercise is "central to personal dignity and autonomy."133 Surely the solecism of characterizing the exercise of such a right as a harm is both obvious and fatal.134

In fact, without purporting to do a complete analysis of the HHS regulations, I do not see how the regulations can be supported by any convincing justifications. My tentative conclusion would therefore be that the regulations ought to be found unconstitutional. The larger point I wish to stress, however, is that a proper analysis of the case requires a firm appreciation of both the power and limits of managerial domains within First Amendment jurisprudence. The fact that Rust involves subsidized speech is largely secondary.

III. FIRST AMENDMENT CHARACTERIZATIONS OF GOVERNMENT ACTION

There is an important and controversial class of cases in which the fact of government subsidization is central to constitutional analysis. These cases do not turn on the assignment of speech to particular social domains, but depend instead on the characterization of government action. The essential question posed by these cases is whether conditions on government subsidies should be classified as regulations imposed upon persons, or whether they should instead be classified as internal directives guiding the conduct of state institutions. The topic is large and complex, and at best I will be able to offer only a few preliminary observations. These can most usefully be developed in the context of the specific issues raised by the recent controversy surrounding congressional restrictions on grants to artists offered by the National Endowment for the Arts (NEA).135

A. The NEA Controversy: Constitutional Characterizations of Funding Criteria

Congress created the NEA in 1965 "to develop and promote a broadly conceived national policy of support for the . . . arts in the United States."136 The NEA is authorized to award grants to "individuals of exceptional talent engaged in or concerned with the arts."137 By statute, applications for grants must be submitted "in accordance with regulations issued and procedures established" by the NEA Chair.138 Although the NEA attempted to insulate these procedures "from partisan political considerations"139 by ceding de facto authority to "panels of experts, usually peers of the applicant consisting of museum professionals or artists involved in the same discipline,"140 the work of artists subsidized by the NEA came under severe ideological attack in the late 1980s.141